ONTARIO HUMAN RIGHTS COMMISSION

ANNUAL REPORT

1982-1983

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Ontario

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June 1983

The Honourable Russell H. Ramsay
Minister of Labour
400 University Avenue
14th Floor
Toronto, Ontario
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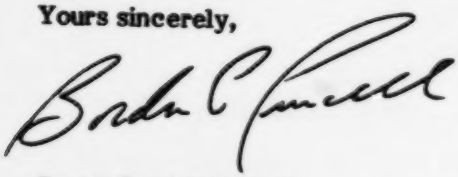
Dear Mr. Ramsay:

Pursuant to Section 30(1) of the Human Rights Code, 1981, it is my pleasure to provide to you the Annual Report of the Ontario Human Rights Commission for the fiscal year 1982-83, for submission to the Legislative Assembly of Ontario.

Yours sincerely,



Canon Borden Purcell
Chairman

MINISTER'S MESSAGE

I remain extremely pleased to be associated with the Ontario Human Rights Commission during the many busy months since the proclamation of the Human Rights Code, 1981.

This flagship Code is one of the most progressive in our history. It addresses acts of discrimination never before proclaimed as unacceptable under the law...and it is one of which my predecessors and all people who had the opportunity for input, can be immensely proud.

The wide-scale publicity campaign directed to all Ontarians, as well as a large commitment from the Ontario Human Rights Commission and the staff of the Ministry of Labour, have served to further develop a spirit of cooperation among the many and varied peoples who share this wonderful province.

Yours sincerely,

R. H. Ramsay

Russell H. Ramsay
Minister

CHAIRMAN'S REMARKS

I am pleased to submit this annual report on the first anniversary of the new Human Rights Code, and a short period of time after my first anniversary as Chairman.

I am grateful for the continuing support of the Minister of Labour, the Honourable Russell H. Ramsay. He has frequently demonstrated his commitment to our purpose during his public appearances and consultations over the past year. On numerous occasions, the Minister has voiced the need for equality of opportunity and positive inter-group relations.

The proclamation of the new Code was the highlight of the 1982-83 fiscal year. The extended grounds and broadened mandate continued Ontario's position of leadership in the field of human rights legislation, and will enable us to respond more effectively to the needs of our changing communities.

An extensive publicity campaign was launched to introduce and explain the provisions of the new Code. The theme, "Together We Are One," was carried through newspaper and radio advertising, posters and a series of pamphlets which outlined and explained various aspects of the Commission's work. The large number of requests for information, publications, audio-visual materials, seminars and guest speakers that resulted from the campaign was a very positive indication of the interest of the community in upholding the letter and spirit of the Human Rights Code.

While it is too early to assess the impact of the new provisions of the Code, there are three areas I would like to comment on.

The first is the protection from discrimination of people with mental or physical handicaps. Within the last fiscal year, 124 allegations of discrimination because of handicap represented 15 per cent of all cases filed. Staff specialists are responsible for providing the regional staff with advice with respect to the investigation and conciliation of complaints, and research and educational activities relating to discrimination on the ground of handicap.

The second is sexual harassment, which is now prohibited and defined by the Code. As well, unwelcome sexual advances made by a person in authority (or threats of reprisal because of rejection thereof) are explicitly prohibited. The Commission has been very successful in obtaining remedies for complainants, and in implementing corrective programs and policies to ensure that the problem does not re-emerge. A number of school boards, universities, colleges and industrial firms have already taken the initiative by instituting policies on and mechanisms for dealing with sexual harassment.

The third is the provision of statutory authority for the Lieutenant Governor in Council to designate at least three members of the Commission to constitute a Race Relations Division of the Commission, and the designation of one of these members as Commissioner for Race Relations. It is the mandate of the Race Relations Division to perform functions of the Commission relating to race, ancestry, place of origin, colour, ethnic origin or creed that are referred to it by the Commission.

A most fortunate aspect of being Chairman of the Ontario Human Rights Commission is the opportunity to work with the highly qualified and dedicated staff. Their knowledge and expertise in dealing with the new provisions have led to

the expeditious conclusion of settlements, and to increased community involvement in human rights activities.

My personal commitment at the assumption of my term of office was to increase awareness of the responsibilities and activities of the Commission by travelling around the province and meeting with various communities, organizations, industries, labour groups and concerned individuals and committees. The overwhelming response and cooperation of members of the community have underscored for me that the Commission cannot achieve its goals without the support and good will of the people of Ontario. Nowhere is this more necessary than in the field of race relations. The Race Relations Division of the Commission, through an intensive program of mediation and education, has been instrumental in securing the support and cooperation of community agencies. We must all work together to speak out against racism and to develop effective programs to combat racial discrimination in all its forms.

This has been an active year for the Commission, and I look forward to working with all of you as we strive towards making our mutual ideals a living reality.

THE COMMISSION

Chairman: Canon Borden C. Purcell

Canon Purcell, a member of the Commission since January 1978, was born in Athens, Ontario and left his position as rector of the largest Anglican parish in Ottawa in order to assume his duties as chairman of the Ontario Human Rights Commission in February 1982. The first clergyman to head such a commission in Ontario, Canon Purcell has planned and convened numerous ecumenical events that include conferences on racism, refugees and other disadvantaged persons. Involved in several international organizations on human rights, the chairman is also on the national council of the Canadian Human Rights Foundation.

Vice-Chairman: Rabbi W. Gunther Plaut

Rabbi Plaut is a veteran civil libertarian and social commentator. He has been a lawyer, clergyman and author. In December 1978, he was awarded the Order of Canada. In March 1983, he was elected president of the Central Conferences of American Rabbis, the international organization of liberal rabbis. He is the editor of the Commission's newsletter, "Affirmation," and has authored 15 books.

Race Relations Commissioner: Dr. Bhausaheb Ubale

Dr. Ubale was born in India and educated in the United Kingdom. He holds a Ph.D. in economics. He authored a report entitled: "Equal Opportunity and Public Policy: A report on concerns of the South Asian Canadian community regarding their place in the Canadian mosaic." Dr. Ubale was instrumental in developing a police training program on race relations now being given at the Metropolitan Toronto Police College, as well as a number of other training programs for various institutions and agencies.

Race Relations Commissioner: Peter Cicchi

Mr. Cicchi has a long and illustrious history of community and ethnocultural involvement. He has chaired, co-founded and served as a member of municipal and cultural committees, such as the Federal Consultative Council on Multiculturalism, and is the recipient of citations from the Government of Canada, the Government of Ontario and the City of Hamilton, where he resides. He was, as well, honoured by His Holiness Pope John Paul II with the title of Knight Commander of the Order to St. Gregory the Great. Mr. Cicchi, who has been a commissioner since September 1979, has recently been appointed to the Race Relations Division.

Race Relations Commissioner: Beverley Salmon

Mrs. Salmon practiced her profession of public health nursing in northern Ontario, Toronto and Detroit. She has been actively involved in issues pertaining to multiculturalism, racism, education and the status of women, and was founding chairperson of the Black Liaison Committee of the Toronto Board of Education.

Currently she serves on a planning board committee in North York, is a member of the Arbitrators Institute of Canada, and the Toronto Urban Alliance on Race Relations.

Commissioner: Mary Lou Dingle, Q.C.

Mrs. Dingle is an active partner in a Hamilton law firm. She graduated from McMaster University in Hamilton and Osgoode Hall Law School in Toronto, and was called to the Ontario bar with honours in 1964. An active participant in community life, she is a charter member of the Hamilton Elizabeth Fry Society, a former member of the Equal Rights Review and Coordinating Committee for McMaster University, of the Legal Aid Area Committee in Hamilton, and is presently involved in the United Way and the Canadian Club.

Commissioner: Sam Ion

A syndicated columnist and feature writer currently working for The Toronto Sun, Ms. Ion has been a board member of the YMCA-YWCA, Association for Early Childhood Education, Consumers Association of Canada, and the Status of Women's Committee in Hamilton. She was nominated for Hamilton's "Woman of the Year" in 1978, and for the "Vanier Awards" in 1982.

Commissioner: Dr. Albin T. Jousse

Dr. Jousse, a fellow of the Royal College of Physicians and Surgeons of Canada, has published more than 40 papers in his field of rehabilitation medicine. He was both a professor and department head of rehabilitation medicine at the University of Toronto, and medical director of Lyndhurst Lodge Hospital for 30 years. He is a member of many agencies concerned with the physically impaired, including the International Society of Paraplegia and the Canadian Neurological Society.

Commissioner: Marie T. Marchand

Born in Moncton, New Brunswick, Mrs. Marchand studied political science and public administration at the University of Ottawa. She was a candidate for the Nipissing riding in the 1979 and 1980 federal elections. Fluently bilingual, Mrs. Marchand has been extensively involved in many community organizations and is currently manager of the North Bay Downtown Improvement Area.

Commissioner: Dr. Harry Parrott

Dr. Parrott brings a wealth of experience in public life to his new role as commissioner. He has been actively involved in provincial politics and community service groups. He served in the provincial Cabinet from 1975 to 1981, in the portfolios of Colleges and Universities and the Environment. Dr. Parrott has recently resumed his professional dental practice in Woodstock, Ontario, and is also chairman of the Committee on University Education for Northeastern Ontario.

Commissioner: Gene Rheaume

Mr. Rheaume was born in the Peace River area of Alberta and graduated from the Universities of Saskatchewan and British Columbia. He was a member of parliament for the Northwest Territories from 1963 to 1965. Mr. Rheaume is currently self-employed as a consultant on Native affairs. He was formerly the national chairman of the Native Housing Task Force and is a honorary life member of five Metis, Indian and non-status Indian associations.

Commissioner: Dr. Leonidas Polymenakos

Dr. Polymenakos' role as a commissioner was tragically brief, having been appointed to the Commission in May 1982, until his death in July of the same year.

Dr. Polymenakos was born in Sparta, Greece and graduated in medicine from the University of Athens in 1931. After distinguished war service in Greece during World War II he came to Canada in 1945 as director of the Greek War Relief Commission for North America, and eventually set up a medical practice in Toronto. He was appointed honorary vice-consul for Greece in Toronto in 1961 and was largely responsible for the construction of the Hellenic Cultural Centre and San Dimitrios Greek Orthodox Church. Dr. Polymenakos was elected president of the Greek Community of Metro Toronto in 1971, also served on the Ontario Advisory Council on Multiculturalism and was a member of the Canadian Consultative Council on Multiculturalism until his death. On July 1, 1982, he was awarded the Order of Canada as a tribute to his rich and varied contribution to Canadian life.

ROLE AND ACTIVITIES OF THE COMMISSION

1982-83

The aim of Ontario's Human Rights Code is to create, at the community level, a climate of understanding and mutual respect for the dignity and worth of each person, so that each person feels a part of the community and able to contribute fully to the development and well-being of the community and the province.

This statement expresses the public policy of Ontario and draws its inspiration from the United Nation's Declaration of Human Rights which was proclaimed in 1948. The Declaration serves as an inspirational document, but more importantly, it represents a commitment to the promotion of universal social harmony.

The statutory functions of the Ontario Human Rights Commission are:

- to forward the policy that the dignity and worth of every person be recognized and that equal rights and opportunities be provided without discrimination that is contrary to law;

- to promote an understanding and acceptance of and compliance with the Human Rights Code;

- to recommend for consideration special programs designed to relieve hardship or economic disadvantage, or to assist disadvantaged persons or groups to achieve equal opportunity;

- to develop and conduct programs of public information, education and research designed to eliminate discriminatory practices;

- to examine and review any statute or regulation, and any program or policy made by or under a statute, and make recommendations on any provision, program or policy that in its opinion is inconsistent with the intent of this Act;

- to inquire into incidents of and conditions leading to tension or conflict based upon identification by a prohibited ground of discrimination, and take appropriate action to eliminate the source of tension or conflict;

- to initiate investigations into problems based upon identification by a prohibited ground of discrimination that may arise in a community, and encourage and coordinate plans, programs and activities to reduce or prevent such problems;

- to promote, assist and encourage public, municipal or private agencies, organizations, groups or persons to engage in programs to alleviate tensions and conflicts

based upon identification by a prohibited ground of discrimination.

Ontario was the first jurisdiction in Canada to formally recognize the moral, social and political consequences of discrimination by enacting a comprehensive Human Rights Code in 1962. This statute prohibited discrimination on the grounds of race, creed, colour, nationality, ancestry or place of origin with respect to employment; employment agencies; housing with more than six self-contained dwelling units; public accommodation, services and facilities; signs and notices; membership in self-governing professions; and trade union membership. The Government's commitment to human rights was further confirmed by the new Human Rights Code that was proclaimed in June of 1982. The new Code prohibits discrimination with respect to employment; accommodation; contracts; goods, services and facilities; membership in trade unions, vocational associations and self-governing professions; and employment agencies on the grounds of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, age, marital status, family status, handicap, receipt of public assistance (accommodation only) and record of offences (employment only).

Conciliation and Compliance

Once the Commission is in receipt of a complaint, it is obliged to inquire into the allegations and to seek a fair settlement that is satisfactory to all parties involved, through the conciliation process. In 1982-83, 762 complaints of discrimination were resolved.

All cases that are settled in conciliation must be approved by the Commission before they are closed. A panel of three commissioners meets regularly and is responsible to the full Commission for reviewing the settlements arrived at in conciliation.

The core principle of settlement is to bring about a fair resolution of the complaint and to restore the complainant to the position he or she would have enjoyed had the discriminatory act not taken place. In addition, where the investigation reveals evidence of more pervasive discriminatory policies and practices, the conciliation negotiations will include preventive settlement proposals, such as special programs or human rights seminars for the respondent's staff.

It is also through the conciliation process that the Commission clarifies any misunderstandings that gave rise to a complaint and undertakes to eliminate any employment or business practices that deny equality of opportunity to persons protected under the Code.

Upon the panel's review of settled cases, it makes recommendations to the Commission regarding a variety of settlement options: compensation for lost earnings, out-of-pocket expenses and injury to dignity; an offer of employment, housing, service or facility; the establishment of a special program; a declaration by management of a policy of equality of opportunity; apologies; assurances of future compliance with the Code, etc.

When a settlement proposal is not in accordance with Commission policy of rectification and remedy, the panel recommends that the Commission refer the case to staff for further conciliation.

Where a case reveals evidence of a discriminatory practice or pattern that suggests a need for policy or procedural changes, the panel makes recommendations for

follow-up action. Thus, investigation procedures and conciliation strategies are constantly reviewed and revised where necessary, in light of emerging social and legal trends.

The Commission also reviews patterns of discrimination as revealed by a profile of the complaints received over specific periods. This facilitates policy decisions on the use of such strategies as employer consultations and public education to attempt to reduce persistent types of discriminatory practices.

Where the parties do not reach a conciliated settlement, the Commission, at its monthly meeting, evaluates the evidence and requests the Minister of Labour to appoint a board of inquiry, or dismiss the case in accordance with the provisions of the Code. When the Commission decides to dismiss, or not to deal with, a complaint, the complainant may request the Commission to reconsider its decision.

The Commission may recommend for consideration special programs. As mentioned, the new Code allows the Commission to review any statute, regulation, program or policy established under legislation. Following this review, the Commission may make recommendations on any provision, program or policy that is inconsistent with the intent of the Code. After June 15, 1984, the new Code will also have primacy over all other Ontario legislation, unless an Act or regulation specifically provides that it is to apply notwithstanding the provisions of the Code.

In the conciliation of each complaint of discrimination, the Commission aims to effect a satisfactory settlement. A basic objective underlying settlement is to remove the conditions leading to further arbitrary denials of equality of opportunity, and thus to reduce the multiplier effects which discrimination and stereotyping have upon the society. This principle is better understood in the context of the United Nations definition of discrimination, which refers to any distinction, exclusion, restriction or preference based on a prohibited ground. This, in turn, has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights in social or economic life.

The Commission believes that an amicable and fair resolution, worked out in good faith, leads to attitudinal change and the elimination of discriminatory practices. When conciliation fails however, Section 35(1) of the Code empowers the Commission to request a board of inquiry, if it appears that the procedure is appropriate and the evidence warrants an inquiry.

It has been argued that:

> "Modern day human rights legislation is predicated upon the theory that the actions of prejudiced people and their attitudes can be changed and influenced by the process of free education, discussion and the presentation of socio-scientific materials that are used to challenge popular myths and stereotypes about people. Human rights is a skillful blend of educational and legal techniques in the pursuit of social justice."
>
> "The philosophy underlying the approach is that people should be given an opportunity to reassess their attitudes and to reform themselves after seeing how much more severe is the injury to the dignity and economic well-being of others than is their own loss of comfort or convenience. However, if persuasion and conciliation fail, then the law must be upheld, and the law requires equality of access and of opportunity."

We have made many positive strides in the field of human rights, but we still have far to go. Complaints received by the Commission indicate that the major human rights problems in Ontario are in the areas of racial discrimination, sex discrimination, sexual harassment and discrimination against people with handicaps. Numerically, discrimination in employment represents the most prevalent complaint category.

Legislation on human rights in Ontario performs several functions. It recognizes the social and economic costs of discrimination. It states clearly the public policy of the province. It encourages people to take a stand in opposing discriminatory practices. It provides legal redress for individuals who have been discriminated against. It creates a mechanism for resolving inter-group tensions that might otherwise escalate into more explosive solutions. The Human Rights Code also expresses and reflects the values of our democratic society and provides support by example and by law for greater understanding of and respect for these values. The prohibition of acts of discrimination leads to a reduction in the levels of prejudice and stereotyping. As long as discriminatory treatment is evident, the tendency to regard people as undeserving of equal treatment will continue.

When the Code was first enacted in 1962, it was generally believed that discrimination took place only through conscious, overt actions directed against individuals. The Code has always directly addressed and remedied this form of discrimination.

However, today, while this form of discrimination still exists, another common form is discrimination resulting from seemingly neutral practices which perpetuate the effects on minorities and women of institutional, systemic or historical discrimination.

The new Code addresses this in three ways as detailed in the Legal Initiatives Section of this report. Briefly they are: the new Code concerns itself not only with the conduct of the discriminator but with the rights of the individual; it is not only the intent of a policy or practice which determines whether or not discrimination occurred, but also, the adverse effects of a neutral practice on equality of opportunity are considered; and the Commission can recommend and approve special programs, as described earlier.

Race Relations Division

In addition to Conciliation and Compliance, the second major program is the work of the Race Relations Division, whose activities are outlined more extensively, further on in this report. Created in 1979, the Race Relations Division has now been given the statutory authority to inquire into conditions leading to tensions or conflict based on race, colour, place of origin, ancestry, ethnic origin or creed, and to alleviate such problems either through its own programs, or by assisting community groups or agencies in their mediation and preventive activities.

Again last year, the Minister of Labour was a member of the Cabinet Committee on Race Relations. In addition, the Commission is now represented on the inter-ministerial committee that provides support to the Cabinet Committee on Native Affairs. The Cabinet Committee on Race Relations recently published an official Government of Ontario policy statement on race relations, and a task force report entitled, "The Portrayal of Racial Diversity in Government Advertising and Communications."

Public Education and Consultation

Respect for human rights is an old tradition in Ontario, but it is a tradition that is more fragile than we think. A climate of understanding and mutual respect among all groups will not grow of its own initiative. It requires careful and constant nurturing and encouragement through public edcuation as well as legislative action.

The new Code requires the Commission to carry out public education programs to promote the Government's public policy of equal rights, equality of opportunity and recognition of the dignity and worth of every person.

There is an ongoing need to educate groups and individuals regarding the provisions of the new Code and the reduction of prejudice and stereotyping conditions which inevitably lead to discrimination. During fiscal year 1982-83, the Chairman travelled throughout the province, participating in approximately 200 events concerning the new Code and the Commission's programs of conciliation and compliance, race relations and public education.

The Commission has taken the opportunity presented by the passage of the new legislation to initiate consultations with senior officials of major institutions, organizations and corporations, with a view to informing them about the requirements of the new Code, and assisting in the development of human rights policies and preventive programs. Close contact is maintained with community, business and labour leaders; law enforcement agencies; educational, media, and religious institutions; social service agencies and governments through speaking engagements, media interviews and liaison with community groups. As well, the Commission's staff continued its extensive educational programs of seminars, films, conferences, literature distribution and consultations.

During the monthly meetings of the Commission and the Race Relations Division, a number of individuals and organizational representatives are invited to share information in order for the Commission to be kept informed of particular human rights issues and problems. These discussions assist the Commission in the development of policies and programs. Through this format, mutual goals are recognized, as well as the need for cooperation in achieving them.

Close contact with organizations, community groups and individuals committed to the advancement of human rights principles enabled the Commission to hold and co-sponsor several conferences throughout the province during the fiscal year, in an attempt to further increase awareness of and sensitivity towards human rights in our society. Two examples will be outlined in the section of this report highlighting the work of the Race Relations Division.

In March of this year, the Chairman's Office took the initiative of mailing the new Declaration of Management Policy poster to over 3,000 municipalities, industries, businesses, professional organizations, service clubs, unions, educational institutions and personnel associations. The poster was designed to reflect both the spirit and the provisions of the new Code, and calls upon each of us to lend support to the goal of harmonious relations among all employees in the workplace. The overwhelming response reinforces the belief that the timeless values of respect, fairness, equality of opportunity and dignity are shared goals which help to strengthen the social and moral fibre of our society.

In addition, the Commission launched a systematic program of education within the schools throughout Ontario in the fall of 1982. The response continues to be most

positive, and seminars presented in the schools by the Commission's staff have been extremely well received.

"Affirmation"

Rabbi W. Gunther Plaut, Vice-Chairman of the Commission, the author of several books and a regular contributor to the Toronto Globe and Mail, is the editor of "Affirmation," the Commission's official newsletter. It contains feature stories, personal profiles, examples of significant cases and settlements, findings of boards of inquiry, editorials and articles on important human rights topics. Articles are written by staff, commissioners and interested members of the public. "Affirmation" has a circulation of 10,000 including employers, schools, labour and community organizations and members of the general public.

The June 1982 issue was devoted to the 20th anniversary of the Human Rights Code and the proclamation of the new Code, by way of a historical account of the development of human rights in Ontario, and various perspectives on the extended provisions of the Code.

The December issue recognized International Human Rights Day and the 34th anniversary of the United Nations Universal Declaration of Human Rights. In his editorial, the Chairman urged the residents of Ontario to make special efforts to promote international understanding, cooperation and peace, as well as universal respect for human rights.

In addition, the Commission issued a province-wide public statement to the media which called upon all agencies, organizations, municipalities, communities and individuals concerned with the protection and promotion of human rights to give appropriate significance to Human Rights Day on December 10th. Responses to a similar letter to Ontario mayors and reeves included Human Rights Day proclamations, Human Rights Week celebrations, community forums and multicultural festivals throughout the province, special human rights activities in elementary and secondary schools, as well as media coverage of such events. The Chairman and various members of the Commission also participated in media interviews and community gatherings during the week.

The Commission has also initiated activities directed towards promoting many of the values enshrined in the United Nations Declaration for its 35th anniversary on December 10, 1983.

International Responsibilities

Ontario and Canada have been involved in the international human rights arena for many years. In signing the United Nations Declaration of Human Rights in 1948, all member nations assumed an obligation to promote human rights at home and abroad. Canada's interest was heightened with the Helsinki Conference of 1975 and the adoption of its Final Act, which was the reiteration by all participants of their international human rights commitments.

The Commission forms part of, and holds membership in a network of human rights agencies on both the national and international levels. Commission representatives, for example, participate annually in conferences held by the International Association of Official Human Rights Agencies, the Canadian Association of

Statutory Human Rights Agencies, and the Federal-Provincial Committee of Officials Responsible for Human Rights. A number of representatives from recently created human rights commissions abroad sought information and assistance by exploring and examining the role and function of the Commission.

The International Covenant on Economic, Social and Cultural Rights, the International Covenant on Cultural and Political Rights and the Optional Protocol to the Covenant on Civil and Political Rights were adopted by the United Nations General Assembly on December 16, 1966. Ontario gave its written acceptance of theses two Covenants in 1972, prior to Canada's ratification of both in 1976. In ratifying these agreements, Canada recognizes its obligations under the documents and confirms its commitment to the elimination of discrimination and the promotion of equality of opportunity.

A Federal-Provincial Ministerial Conference on Human Rights, held in 1975, created a new national organization called the Continuing Federal-Provincial Committee of Officials Responsible for Human Rights. This Committee, which meets at least twice a year, was established to provide and maintain the liaison and consultation necessary for Canada to meet the obligations inherent in signing the International Covenants. Ontario has been an active participant on the Continuing Committee since its inception.

The Continuing Committee has coordinated several conferences of ministers responsible for human rights, modelled after the initial one held in 1975, at which ministers from all jurisdictions in Canada review and discuss current issues and initiatives in the area of human rights. Ontario was strongly represented at the conference held in February 1981, and will participate in the next one, which is scheduled for September of this year. This forum enables the members to gain a common understanding of problems and concerns in the different regions of Canada, and to keep abreast of Canada's role in addressing human rights issues in the international arena. In addition, the ministers propose ways in which human rights programs in Canada can be strengthened to ensure that they conform with the principles enunciated in the International Covenants.

A Coalition for Human Rights has been formed to plan the celebrations of the 35th anniversary of the United Nations Declaration of Human Rights. More than 30 national human rights and civil liberties organizations have joined together to develop a year of special activities, and to plan a joint national event in December. The Coalition represents women, Native Peoples, racial, religious and ethnic groups, disabled people and many other groups concerned with the issues and principles contained in the Declaration.

This Coalition reflects an example of a strong commitment on the part of organizations working in the area of human rights in Canada. Clearly, individual human rights commissions and human rights legislation alone will never end discrimination. The Ontario Human Rights Commission has a uniquely important role to play, but it is imperative that all individuals, organizations and institutions in our society take responsiblility for improving human rights. The overwhelming majority of people in Ontario are men and women of goodwill. However, we must all work together to build a society based on equality of opportunity, quality of life, dignity and respect.

To quote the Premier of Ontario:

> **"Only by working together to forcefully attack deliberate bigotry, and to extend a helping, understanding hand to those who discriminate out of thoughtless unawareness, can we create the kind of community in which we can all contribute as equals to our country's development."**

THE NEW ONTARIO HUMAN RIGHTS CODE

On June 15, 1982, the new Human Rights Code came into effect. Although the former Code was amended many times, the new statute is the first comprehensive revision of Ontario's human rights legislation since it was first enacted in 1962. The new Code responds affirmatively to the 1977 report of the Ontario Human Rights Commission entitled "Life Together," which resulted from a study of the state of human rights in Ontario under the leadership of Dr. Thomas H.B. Symons, Chairman ofthe Commission from 1975 to 1978.

Among the new areas covered by the Code are the following:

- the provision of equal enjoyment without discrimination of goods, services and facilities generally (not limited to those available in a place to which the public is customarily admitted);
- the right to contract on equal terms;
- the prohibition of discrimination because of a person's association with a person identified by a prohibited ground;
- the prohibition of constructive discrimination;
- the prohibition of harassment of an employee by the employer or another employee because of a prohibited ground of discrimination;
- the prohibition of harassment of an occupant of accommodation by the landlord or another occupant because of a prohibited ground;
- the prohibition of sexual solicitation, reprisal or threat of reprisal by a person in a position of authority.

The new Code is the first anti-discrimination legislation in Canada to prohibit explicitly harassment and unwelcome sexual advances.

Several new prohibited grounds of discrimination have been added:

- protection is now provided against discrimination because of handicap, which is defined to mean real or perceived physical handicap, mental retardation or impairment, learning disability, or a mental disorder;
- discrimination because of family status, defined to mean a parent-child relationship;
- discrimination with respect to employment because of record of offences;
- discrimination with respect to accommodation because of receipt of public assistance;

- discrimination because of age is now prohibited in all areas. Age is defined as 18 and over in all areas except employment, in which age is defined as 18 to 65;

- the ground of marital status has been extended to include discrimination in accommodation.

Among other new provisions are the following:

- discrimination in employment against domestic workers in a private household is prohibited;

- boards of inquiry are empowered, subject to considerations of reasonable cost, to make orders respecting the modification of access or amenities after a finding of discrimination on the ground of handicap has been made;

- the Code binds the Crown, and will have primacy over other legislation on June 15, 1984;

- the Code provides for additional sanctions against discrimination in employment by contractors under government contracts, upon a finding of discrimination by a board of inquiry.

LEGAL INITIATIVES

1982-83

Role of Commission Legal Counsel

In June 1981, the Commission employed its first full-time staff legal counsel. Prior to that, the Commission had engaged in-house lawyers on a contractual basis, and in addition, used the services of legal counsel from the Ministry of the Attorney-General for its legal advice and representation before boards of inquiry and the courts.

The primary role of legal counsel is to advise the Commission, its staff, and members of the public with respect to the statutory interpretation of the provisions of the Code and their implementation. Not only has the introduction of substantive changes in the Human Rights Code, 1981 made legal input necessary, but the nature of the cases, presentations and issues before the Commission are of an increasingly technical and complex nature.

The absence of statutory regulations and guidelines puts a premium on the legal analysis and interpretation of the provisions of the Code. This role is especially important due to the fact that the Code is a statute involving both social and legal complexities: its interpretation and application change significantly in response to developments in jurisprudence and emerging patterns and trends of discrimination.

A number of trends have increased the role of legal counsel in the administration and enforcement of the Code. A key function of counsel is to evaluate the evidence gathered in investigation in order to determine whether or not it establishes proof of the complaint allegations. The increasingly subtle nature of discriminatory practices and the growing incidence of indirect and systemic discrimination have made it more difficult to determine when a contravention of the Code has or has not occurred.

The complaint process has therefore become more complex, and legal issues tend to arise frequently during investigation, conciliation and settlement. This factor is compounded by an increase in the number of jurisdictional questions that have emerged as the grounds and areas of coverage of the Code have been strengthened and expanded.

Another important role of legal counsel is to assist in the development of policy and in recommending amendments to the Code, so that its provisions can keep pace with the changing patterns and trends of discrimination.

In addition, legal counsel conducts training sessions of the Commission's staff, and participates in seminars and conferences involving representatives from business, industry, unions and other sectors.

Human Rights Code, 1981

In June 1982, the new Human Rights Code was proclaimed. The new statute has not only expanded and strengthened the duties and functions of the Commission but has significantly expanded the rights of the people of Ontario to freedom from discrimination.

Procedural Changes

In accordance with the principles of natural justice, the new Code provides for several new procedures. When the Commission decides not to request the appointment of a board of inquiry, it must provide each party to the complaint with the reasons for its decision, and the complainant may apply to the Commission for reconsideration of its decision. The respondent is notified of the complainant's application for reconsideration and is given a chance to respond.

Also, the Code provides a fair and expeditious mechanism for dealing with complaints which should not be proceeded with. Accordingly, the Commission may refuse to deal with a complaint if the facts on which the complaint is based occurred more than six months before it was filed, if the Commission feels it is trivial, frivolous, vexatious or made in bad faith, or if there is a more appropriate proceeding under another Act for dealing with the complaint. In such cases, however, the complainant is entitled to request the Commission to reconsider its decision.

There had been considerable concern voiced about the delays involved once a board of inquiry is appointed. To respond to this concern, two statutory time limits have been established to expedite the process. The hearing must convene within thirty days of its appointment by the Minister and the board must render its decision within thirty days of the conclusion of the hearing.

In addition to the procedural safeguards provided by the Code, the Commission's administrative procedures have been developed so as to ensure fairness to all parties involved.

Substantive Changes

When anti-discrimination legislation was first introduced in Canada, it was primarily concerned with prohibiting the discriminatory conduct of those who consciously and deliberately discriminated against others. It is generally agreed that the legislation and the Human Rights Commissions that have enforced it have had considerable success in addressing this type of conduct. However, as more experience with this approach was gained, it became evident that many groups were still not achieving equal opportunity in our society as a result of institutionalized or systemic discrimination.

The new Human Rights Code, 1981 represents an important change of focus and addresses the problem of systemic discrimination in several important ways.

Most noticeable is the change of wording in the Code. The previous Ontario Human Rights Code emphasized the conduct of the discriminator in providing that, "No person shall discriminate..." The language of the new Code concerns itself not with the conduct of the discriminator but with the rights of the individual: "Every person has a right to equal treatment without discrimination...."

The Code prohibits not only overt discrimination, but also constructive discrimination, or practices that are not openly discriminatory but are discriminatory in their effect. The wording of section 10 is as follows:

> A right of a person under Part I is infringed where a requirement, qualification or consideration is imposed that is not discrimination on a

prohibited ground but that would result in the exclusion, qualification or preference of a group of persons who are identified by a prohibited ground of discrimination and of whom the person is a member, except where,

(a) the requirement, qualification or consideration is a reasonable and bona fide one in the circumstances; or

(b) it is declared in this Act that to discriminate because of such ground is not an infringement of a right.

These provisions are designed to address practices that are neutral on their face but are just as effective in denying equal opportunity as are direct or indirect acts of exclusion. For example, minimum height and weight requirements that have the effect of excluding most women from a particular job, would constitute a contravention of the Code unless they could be shown to be genuine and reasonable in the circumstances.

The former Code did not contain specific provisions with respect to constructive discrimination, and its application to cases involving this type of discrimination has never been judicially interpreted by the Supreme Court of Canada. However, the case of O'Malley v. Simpsons-Sears Ltd. will soon be heard by this Court. In this case, Mrs. O'Malley alleged that her job was reduced to part-time because her religious beliefs made it impossible for her to work on Saturdays. When the board of inquiry dismissed the case, the Commission appealed the decision to the courts, which held that the previous Code prohibited intentional discrimination only and found that there was no intent on the part of Simpsons-Sears Ltd. to discriminate against Mrs. O'Malley because of her creed.

Although the new Code specifically includes constructive discrimination, the Commission decided to appeal the Court of Appeal's decision because of its far-reaching implications, not only for the determination of cases pending under the old Code, but also for other Canadian jurisdictions whose statutes lack specific mention of constructive discrimination.

The Supreme Court of Canada granted leave to the Commission to appeal the decision and granted intervenor status to the Canadian, Manitoba, Saskatchewan and Alberta Human Rights Commissions, underlying the national importance of the issue. The decision is pending.

The third method of addressing the problem of systemic discrimination is through the implementation of special programs. Special programs do not contravene the Code, and may be implemented without the prior approval of the Commission. Section 13 defines a special program and empowers the Commission to inquire into and make recommendations regarding such programs, on its own initiative, at the request of the person seeking to implement a special program, or on receipt of a complaint alleging that a particular program does not meet the statutory requirements. In addition, section 28(c) makes it a function of the Commission to recommend the implementation of special programs.

Mandatory Retirement

The Human Rights Code, 1981 provides a right to equal treatment in employment without discrimination on the basis of age (18 - 65 years of age), except where the age of the applicant is a reasonable and bona fide qualification because of the nature of the job.

The previous Code protected people between the ages of 40 and 65 from discrimination in employment, except where age was a bona fide occupational qualification. The Supreme Court of Canada considered this issue in the case of the Ontario Human Rights Commission et al. v. The Borough of Etobicoke. In that case, it was held that the mandatory retirement of firefighters at age 60, which was provided for in the collective agreement, was discriminatory and in contravention of the Code.

That decision now stands for two important propositions. Firstly, the onus is on the employer to establish that the age requirement is reasonable and bona fide. In such cases, evidence as to the relationship between the aging process and the safe, efficient performance of the job may be persuasive.

Secondly, the Court decided that the Code overrides the terms of collective agreements when they violate the Code. In its decision, the Court stated that the Code, a public statute, has been enacted for the benefit of the community at large and of its individual members, and it may not be waived or varied by private contract.

The case is of importance not only because of the fact that many employers in Ontario have similar mandatory retirement policies, but also because the issue of mandatory retirement is an extremely important one in light of our aging population.

DISPOSITION AND SETTLEMENTS

1982-83

TABLE 1 - Complaints Received, 1982-83

Table 1 shows that 831 complaints were received during the fiscal year, representing an increase of 146 (20%) over the 695 received during 1981-82. The increase is almost totally accounted for by the new grounds introduced in June 1982. Of the 831 complaints filed, 266 alleged a contravention of one of the new provisions of the Code.

Employment discrimination was alleged most frequently (at 81% of complaints), thus constituting the bulk of compliance work. Race/colour was the predominant ground (27%), followed by sex (16%), handicap (15%), sexual harassment (12%) and age (11%).

In this first year of the application of the new provisions, allegations of discrimination because of race/colour decreased considerably from their previous percentage of the total, while complaints based upon sex remained relatively constant.

TABLE 1 - Complaints Received by Ground and Code Provision: 1982-83

Ground: / Code Provision:	Race/Colour	Ancestry/Citizenship/ Ethnic Origin/ Place of Origin	Creed	Sex: Female	Sex: Male	Sexual Harassment/ Solicitation/Reprisal ⊕	Age ⊕⊕	Marital Status	Family Status ⊕	Handicap ⊕	Receipt of Public Assistance ⊕ **	Record of Offences ⊕ *	Total	Percentage
Services	20	10	1	2	1	-	4	8	3	28	-	-	78	9
Accommodation	24	2	1	1	-	-	4	9	3	4	7	-	55	7
Contracts ⊕	2	-	-	-	1	-	-	1	-	3	-	-	7	1
Employment	180	57	22	93	32	98	77	21	4	89	-	4	676	81
Vocational Associations	2	1	-	3	-	1	1	-	1	-	-	-	9	1
Reprisal	1	-	-	3	1	-	1	-	-	-	-	-	6	1
Total	229	70	24	102	35	99	87	39	11	124	7	4	831	100%
Percentage	27	8	3	16		12	11	5	1	15	0.5	0.5	100%	

⊕ Since June 15, 1982, new Code provisions and grounds.
⊕⊕ 18 to 39 since June 15, 1982 (17 complaints); 40 to 65 continuing from old Code (70 complaints).
* Only in employment.
** Only in accommodation.

TABLES 2 AND 3 - Cases Closed, 1982-83 (1981-82)

Table 2 shows a decrease in cases closed, from 1,000 in 1981-82 (Table 3) to 762 in fiscal year 1982-83. This decrease was mostly due to the surge of events related to the introduction of the new Code which diverted a substantial amount of staff time from casework to training on the new areas and procedures of the Code. Also, there was a substantial increase in reviews of application forms and advertisements to make them consistent with the new provisions, and members of staff were involved in the preparation of new publications as well as an extensive public education compaign regarding all areas of the new legislation. (The increased volumes of these activities are shown in Table 6).

In addition, there are several new statutory requirements which provide for a greater degree of procedural fairness than was the case under the old Code. The complainant may apply to the Commission for a reconsideration of its decision to dismiss his or her case, and the Commission now has the discretion not to deal with a complaint in certain instances. Also, the parties to a complaint must be provided with written reasons whenever a complaint is dismissed. These procedures are discussed in the Legal Initiatives section of the Report.

Also, Section 42 of the Code provides that where a settlement of a complaint is agreed to in writing, signed by the parties and approved by the Commission, the settlement is binding upon the parties. A breach of the settlement constitutes a violation of the Code. This provision calls for more specific settlement proposals and more carefully documented negotiations than was formerly the case.

All of these provisions have increased both the investigative and administrative aspects of the case work process.

Similarly, case work is increasingly complex due to the nature of the new provisions, for instance, there may be difficulty in determining the functional capabilities of the complainant as they relate to the essential duties of the job in complaints based on handicap.

Table 2 shows that the number of cases settled has increased from 58 per cent in 1981-82 to 60 per cent in the past fiscal year.

TABLE 2 - Closed Complaints by Disposition and Ground: 1982-83

Ground: / Disposition:	Race/Colour	Ancestry/Citizenship/ Ethnic Origin/ Place of Origin	Creed	Sex	Sexual Harassment/ Solicitation/Reprisal ⊕	Age ⊕⊕	Marital Status	Family Status ⊕	Handicap ⊕	Receipt of Public Assistance ⊕ **	Record of Offences ⊕ *	Total	Total, 1981-82
Settled	150 63%	44 54%	11 85%	92 53%	62 74%	53 59%	14 58%	3 60%	31 64%	-	-	460 60%	581 58%
Dismissed	75 31%	29 35%	-	67 38%	13 15%	22 24%	5 21%	-	9 19%	-	-	220 29%	321 32%
Withdrawn	14 6%	9 11%	2 15%	16 9%	9 11%	15 17%	5 21%	2 40%	8 17%	1	1	82 11%	98 10%
Total	239	82	13	175	84	90	24	5	48	1	1	762	1,000

⊕ Since June 15, 1982, new Code provisions.
⊕⊕ 18 to 39 since June 15, 1982 (17 complaints); 40 to 65 continuing from old Code (70 complaints).
* Only in employment.
** Only in accommodation.

TABLE 3 - Closed Complaints According to Ground and Code Provision: 1981-82

Code Provision:	Race/ Colour	Nationality/ Ancestry	Sex/ Marital Status	Creed	Age	Total	Percentage
Employment	328	64	327	29	78	826	83
Housing	35	14	5	-	-	54	5
Public Accommodation/ Services/Facilities	30	10	27	2	-	69	7
Reprisals	17	1	7	1	2	28	3
Signs and Notices	5	-	-	1	-	6	-
Filed by Third Party	6	3	6	2	-	17	2
Total	421	92	372	35	80	1,000	100%
Percentage	42	9	37	4	8	-	100%

TABLES 4 AND 5 - Settlements Obtained, 1982-83 (1981-82)

Table 4 represents the settlements (both qualitative and quantitative) obtained during 1982-83 according to the ground of the complaint. Table 5 shows the settlements reached during 1981-82, categorized according to the social area of the complaint. A comparison can be made of the number of settlement items using both tables.

Table 4 indicates that 198 complainants received compensation for lost earnings, out-of-pocket expenses or insult to dignity in the amount of $534,058 in 1982-83, representing an increase of $77,136 over the previous year's total of $456,922. Moreover, the number of complainants receiving compensation remained stable over both years (at 198 in 1982-83, and 206 in 1981-82). These figures are noteworthy given the fact that the number of complaints resolved decreased from 1,000 in 1981-82 to 762 in 1982-83.

Similar increases are evident in other types of settlements, where the two years are compared. In 1982-83, 190 complainants received offers of present or future jobs or facilities, while in 1981-82, only 95 complainants received such offers. Twenty-eight respondents agreed to implement affirmative action programs as part of a settlement in 1982-83, as compared with 16 such programs in the previous year.

Settlements in cases based on age discrimination were particularly significant this year. The economic downturn has contributed to many attempts to lay off, dismiss or impose early retirement on the basis of age. Where this was established by the investigation, complainants often received compensation for their losses and/or an offer of a present or future job. Similarly, there were some substantial settlements in cases dealing with policies imposing retirement before age 65, which are now clearly illegal in view of the 1982 decision by the Supreme Court of Canada on the issue of compulsory retirement for firefighters.

TABLE 4 - Settlements Obtained in Closed Cases by Ground: 1982-83

Ground:	Settlement: Specific and General Damages		Offer of Job or Facility	Offer or Consideration of Next Job or Facility	Affirmative Action Implemented	Seminars with Respondent Staff	Review of Practices, Policies or Documents	Issuance or Correction of References	Letter of Apology to Complainant	Written Declaration of Management Policies
Race/Colour	$ 58,710	(42) *	26	23	7	24	31	17	13	145
Ancestry/Citizenship/ Ethnic Origin/ Place of Origin	38,872	(14)	5	2	1	9	5	3	3	36
Creed	4,561	(3)	3	1	1	1	5	1	-	9
Sex	59,183	(54)	20	40	15	33	28	9	15	145
Sexual Harassment	76,261	(43)	2	6	-	8	5	1	3	13
Age	287,913	(32)	13	10	1	10	7	3	7	45
Marital Status	1,388	(3)	1	2	2	2	3	-	1	12
Family Status	-	-	2	3	-	-	2	-	1	3
Handicap	7,170	(7)	16	15	1	8	20	5	8	23
Receipt of Public Assistance	-	-	-	-	-	-	-	-	-	-
Record of Offences	-	-	-	-	-	-	-	-	-	-
Reprisal	-	-	-	-	-	-	-	-	-	-
Total	$534,058	(198)	88	102	28	95	106	39	51	431

* Number of complainants who received monetary settlements.

TABLE 5 - Settlements Obtained in Closed Complaints: 1981-82

Settlement Category:	Employment	Housing	Public Accommodation/ Services/Facilities	Other	Total
Compensation	$426,084	$765	$2,149	$27,924	$456,922
(number of complainants)	187	5	9	5	206
Offer of Present/Next Job	65	13	14	3	95
Affirmative Action	12	-	2	2	16
Consultations/ Review of Practices	964	46	62	58	1,130

TABLE 6 - Intake, Voluntary Compliance and Public Education Activities, 1982-83 (1981-82)

The number of inquiries, public education activities, consultations and publications distributed increased greatly during fiscal year 1982-83, in response to the proclamation of the new Code. Both commissioners and staff devoted considerable time to activities designed to make members of the public aware of their rights and responsibilities under the new provisions.

The number of application forms and advertising reviews increased significantly as well, in response to a need to bring them into harmony with the new protections relating to handicap, age, family status, record of offences and receipt of public assistance. Many employers and businesses requested the Commission to review and amend their forms, documents and leases to ensure that they conform with the new statutory requirements.

The number of informal resolutions completed in fiscal year 1982-83 increased over the previous year. This was due to the lack of clarity with respect to the Commission's jurisdiction over some of the complaint allegations based upon the new areas of coverage. Many individuals were anxious to benefit from the new protections of the Code during its first year, and there was, in some instances, uncertainty about their application to the allegations made. Where jurisdiction was unclear, and respondents were amenable to resolving the problem, the staff attempted to seek a resolution of the matter by informal means. As precedents emerge over time, it is expected that the number of these kinds of informal resolutions will decline considerably.

	1982-83	1981-82
Inquiries	35,351 *	22,746
Referrals	4,812 *	5,059
Informal Resolutions	567	247
Application Form Reviews	1,199	538
Advertising Reviews	451	158
Exemptions	57	83
Speeches/Media Contacts/Consultations	884 **	565
Publications Distributed	543,680 *	220,000

* Totals for Compliance/Race Relations/RR Commissioner/Chairman's.
** Totals for Compliance/Chairman's Office.
Other totals for Compliance only.

TABLE 7 - Boards of Inquiry

If a complaint cannot be resolved to the satisfaction of the complainant, the respondent and the Commission, it is reviewed by the Commission which then decides whether or not to request the Minister to appoint a board of inquiry to hear and decide the case.

The board holds a hearing, considers the evidence, determines if there has been a violation of the Code and by whom, and, if discrimination is found, makes an order of settlement. It has the power to direct any party found in contravention of the Code to do anything that the party ought to do to achieve compliance with the legislation, both in respect of the complaint and in respect of future practices, and to compensate the complainant for all losses suffered because of discrimination. The Code provides that "where the infringement has been engaged in wilfully or recklessly" an award may be made for mental anguish to a maximum of $10,000. If no evidence of discrimination is found, the board will dismiss the case.

Table 7 reveals a comparison in the number of hearings appointed and completed, during fiscal years 1982-83 and 1981-82.

	1982-83	1981-82
Boards Appointed	22	43
Boards Completed	21 *	42 **
Decisions Received:		
Decisions for Complainant/ Settled by Parties	14	38
Decisions for Respondent	6	8
Complaints Withdrawn	1	2
Under Appeal	2	1
Boards Incomplete (from all years)	48	

* These boards involved a total of 27 complainants.
** These boards involved a total of 49 complainants.

TABLES 8 AND 9 - Sexual Harassment Cases

Table 8 shows that 340 cases have been completed to date (many others are still being processed) with an average settlement rate of 77 per cent.

With respect to the settlements reached in the 84 complaints resolved in 1982-83, 43 complainants received a total of $76,261 in damages for earnings lost due to discrimination or as compensation for mental anguish (see Table 4). Eight complainants received offers of the job or facility denied, or consideration for the next available job or facility. A total of 26 respondents agreed to institute corrective policies to deal with and prevent future harassment, and to hold a human rights seminar for their employees.

Table 1 indicates that 99 complaints on grounds of sexual harassment, unwelcome sexual solicitation or reprisal for refusing such solicitation were filed this year. This represents 12 per cent of total cases registered.

As shown in Table 9, a total of 22 boards of inquiry have been appointed to deal with cases of sexual harassment.

TABLE 8 - Closed Sexual Harassment Complaints by Disposition, 1976-83

	Settled		Dismissed		Withdrawn		Total	
	Nos.	%	Nos.	%	Nos.	%	Nos.	%
1976/78	n/a		n/a		n/a		17	100
1978/79	30	86	1	3	4	11	35	100
1979/80	51	89	1	2	5	9	57	100
1980/81	40	66	10	17	10	17	60	100
1981/82	64	74	14	16	9	10	87	100
1982/83	62	74	13	15	9	11	84	100
Total	247		39		37		340	
Percentage of Total	76.5%		12%		11.5%		100%	

TABLE 9 - Boards of Inquiry on Sexual Harassment Cases, 1979-83

	Total Boards Appointed	Number of Complainants Involved	Decision for Complainant/ Settled by Parties	Monetary Awards	Decision for Respondent	Incomplete
1979/80	1	1	1	$ 3,500		
1980/81	1	2			1	
1981/82	6	14	5	15,543	1	
1982/83	14	16	5	10,635	1	8
Total	22	33	11	$29,678	3	8

DISCRIMINATION BECAUSE OF HANDICAP

1981 was designated the International Year of the Physically Disabled by the United Nations. Advertisements, conferences, sports events, newspaper articles and television programs helped to create a new awareness of discrimination against handicapped persons.

The new Code prohibits, among others, discrimination because of handicap. Discrimination because of handicap is prohibited in the areas of services, goods and facilities, accommodation, contracts, employment and vocational associations. Harassment because of handicap is prohibited in employment and accommodation.

Section 22 permits employers to raise questions regarding the extent of an applicant's handicap and its effects on his or her ability to do the job only at a personal interview. Questions about illness, injury or medical history, in the past or in the present, may not be asked on an application form or at any stage prior to the interview.

Similarly, an employer may require an applicant to undergo a job-related medical examination either during or after the interview process, but not before. In addition, the results of the examination must be used only to determine the person's ability to perform the essential duties of the employment.

These provisions address a concern that has been voiced with increasing frequency in the past few years to the effect that persons with handicaps have been denied employment opportunities because of traditional prejudices and lack of familiarity with their capabilities. In particular, it has been the Commission's experience that people have been excluded from jobs on the basis of medical questions on the application form without a determination being made as to whether the individual is able to perform the essential job functions.

ACTIVITIES - 1982-83

Conciliation and Compliance

The emphasis of Ontario human rights legislation has always been on voluntary compliance and a conciliatory approach. All cases of discrimination because of handicap throughout the province are handled by the regional staff who receive specialist guidance through an administrative arrangement established due to the unique and complex features of this new ground. Professional expertise is often necessary to assist the investigating officer in making decisions as to what constitutes the essential duties of the job and the individual's ability to perform them. Other complex cases requiring expertise include those involving novel tests of jurisdiction and complaints in which the validity of employment tests and other screening procedures are at issue.

Voluntary Compliance

Assisting employers to comply with the provisions of the Code by reviewing their pre-employment screening measures, such as advertising, application forms and pre-employment medicals, is an important specialist function. In addition, the Commission's staff advise employers about appropriate methods to determine the

essential duties and requirements of specific jobs as these relate to the individual's ability to perform them. Advising employers about recruitment strategies that will apprise handicapped individuals and their representative organizations of employment opportunities is another important responsibility.

Liaison with the Handicapped Employment Program of the Ministry of Labour, in-house seminars with handicap organizations and agencies for information exchange, contact development and networking, discussions with consultants on architectural or environmental barriers and aids and adaptations, and consultations with occupational therapist associations are all important aspects of the outreach program. These consultations explore such areas as functional capacity analysis and medical assessments to determine job performance ability and potential.

In addition, members of staff conduct seminars for supervisors and managers in the Ministries of Labour, Community and Social Services and the Workers' Compensation Board, in order to increase their awareness of the provisions of the Code relating to handicap.

Complaints of Discrimination

During the period June 15, 1982 to March 1983, the Commission handled 124 formal complaints. Of these 31 were resolved, nine were dismissed by the Commission, either due to lack of jurisdiction or lack of evidence to substantiate the complaint, and eight were withdrawn by the complainant. The remaining 76 were still active at March 31, 1983.

Of the formal complaints filed, 116 have been on the ground of physical handicap and eight have been on the ground of mental handicap. The types of handicapping conditions are shown on page 38.

Public Education

The Commission has conducted a comprehensive educational campaign on discrimination because of handicap. This includes speeches, consultations, awareness sessions, seminars, workshops, conferences and media interviews.

The Commission continues to develop future educational initiatives on a province-wide basis for business and industry, unions, vocational associations, educational systems, inter- and intra-government agencies, voluntary associations and religious associations.

The Commission has developed and acquired an extensive collection of resource information pertinent to discrimination against disabled persons. These materials deal with such subjects as existing legislation which protects the rights of the handicapped and related legal interpretations and case law.

A priority of the public education program is the development of media and public educational strategies to sensitize and educate handicapped individuals and their organizations about the legislation and its application. This includes giving speeches and conducting awareness seminars and workshops in centres across the province.

In addition to using mainstream and community broadcast and print media, articles prepared by the Commission are included in the newsletters, papers and reports which are issued by interested organizations to their memberships.

Staff Training and Development

Training sessions for the Commission's staff on the ground of handicap are conducted on a regular basis at regional staff meetings and workshops. In-house seminars and consultations for staff are conducted with consumer organizations and agencies, at which available community resources are examined for their application to the Commission's programs. Among the representative organizations are the March of Dimes, the Advocacy Resource Centre for the Handicapped, the Ontario Association for the Mentally Retarded, the Blind Organization of Self-help Tactics and the Canadian Hearing Society.

The staff have also met with specialists in removing architectural and environmental barriers and consultants on aids and adaptations, such as Technical Aids and Systems for the Handicapped, of Sunnybrook Hospital, and the Community Occupational Therapy Associates. Consultations are routinely held with physicians, occupational- and physio-therapists and vocational rehabilitation counsellors, in order that the staff may become knowledgeable about techniques for assessing the relationship between various handicapping conditions and job performance. The Commission's resource centre contains materials obtained from other human rights commissions and agencies or organizations involved with various types of handicap, and staff are regularly kept abreast of new developments in North America and overseas.

Program Development

Developing strategies to eliminate both physical and psychological barriers to equality of opportunity in all areas protected under the Code is a critical aspect of the program.

Advising respondent groups such as employers, landlords and business persons about effective, low-cost methods of providing access and amenities for the physically handicapped, is an important feature of the Commission's consultative work. This activity is due to the provisions of Section 16 of the Code that the Commission may use its best endeavours to effect a settlement as to the provision of access or amenities, or as to the duties or requirements, even though lack of access or adaptation does not constitute a violation of the statute.

The Commission is establishing working committees composed by members representing specific areas in which discrimination is prohibited, such as services and accommodation. Also represented are specialists, human rights officers, and client group members, who work together to develop guidelines to facilitate equal opportunities for the handicapped.

Both commissioners and staff are developing and maintaining on-going liaison among consumer and advocacy organizations, public and private agencies and employers, to increase awareness of the provisions of the Code and the dynamics and consequences of discrimination and prejudice. These forums are essential to the sharing of ideas and information on current issues and problems.

TABLE 10 - Handicap Complaints Received by Type of Handicap and Code Provision: 1982-83

Type of Handicap: / Code Provision:	Services	Accommodation	Contracts	Employment	Vocational Associations	Total	Percentage
Sensory (vision/hearing/speech/etc. impairments)	6	1	-	14	-	21	17
Respiratory (asthma/lung diseases/etc.)	-	-	1	1	-	2	2
Limbs and Digits (amputation/impairment of limb/digit/etc.)	2	-	-	14	-	16	13
Cardiovascular (heart disease/hypertension/stroke/arteriosclerosis/etc.)	-	-	-	5	-	5	4
Neuromuscular (dystrophy/sclerosis/cerebral palsy/quadriplegia/etc.)	10	1	-	4	-	15	12
Neurological (epilepsy/seizures/brain injury/etc.)	2	-	-	7	-	9	7
General Diseases or Disorders (back injuries/allergies/cancer/diabetes/hernia/etc.)	2	-	1	32	-	35	28
Miscellaneous (multiple handicaps/obesity/sick leave/etc.)	4	-	-	9	-	13	10
Learning Disability (dyslexia/etc.)	-	-	-	-	-	-	-
Mental Retardation (or mental impairment)	1	-	-	-	-	1	1
Mental Disorder (psychiatric illness/personality disorders/addictions)	1	2	1	3	-	7	6
Total	28	4	3	89	-	124	100%
Percentage	23%	3%	2%	72%	-	100%	

TABLE 11 - Complaints on the Ground of Handicap Received by Canadian Human Rights Commissions

	British Columbia		Federal		Manitoba		Nova Scotia		Quebec		Saskatchewan	
	Nos.	% *	Nos.	%	Nos.	%	Nos.	%	Nos.	%	Nos.	%
1978/78-79	n/a	n/a	45	20	24	7			-	-	-	-
1979/79-80	n/a	n/a	85	22	33	6			98	11	-	-
1980/80-81	21	3	92	22	31	8	33	8	152	17	51 **	21.5
1981/81-82	n/a	n/a	112	23	47	7			174	18	35	20.0
1982/82-83	31	n/a	103	26	63	8	15	4	104	17	39	18.5

Ontario - 124 complaints (15%) June 15, 1982 to March 31, 1983.

* Percentage of total complaints received in that year.
** August 7, 1979 to December 31, 1980.

Type and Date of Coverage

British Columbia - physical and mental handicap covered under "unreasonable cause," since the late 1960's.
Federal - physical, since 1978.
Manitoba - physical, since 1977 (4 complaints - 1.5% of total) and mental, since 1982.
Nova Scotia - physical, since 1975 (1975 to 1977, 8 - 2.4%).
Ontario - physical and mental, since June 15, 1982.
Quebec - physical and mental since 1979.
Saskatchewan - physical, since August 1979.

EXAMPLES OF

COMPLAINTS OF DISCRIMINATION

1982-83

EMPLOYMENT

Race, Colour, Nationality, Ancestry, Place of Origin

A black man of Nigerian origin had been employed for several months as a computer programmer in a large business operation. He alleged that he had not been sent on training courses as his white counterparts had, and was denied a merit increase along with several other black employees. He left the company for a better opportunity and filed a complaint with the Commission alleging discriminatory terms and conditions of employment because of race, colour, ancestry and ethnic origin.

During investigation, it was found that management of the company did not use objective and consistent methods in making decisions about which employees should take external training courses and receive merit increases. The evidence supported the complainant's allegations. In addition, personnel documentation provided by the company indicated that two memos from senior managers to the complainant's supervisor commending the complainant for good work performance, were never passed on to him.

The complainant and respondent agreed to the following terms of settlement during conciliation:

- compensation in the amount of $3,800.00, representing $2,300.00 for lost earnings due to discrimination, and $1,500.00 for insult to his dignity,
- a letter of reference,
- a company policy of non-discrimination, to be communicated to all employees in a staff directive, and an article on the provisions of the Code in the company's magazine.

The complainant, a black woman, had been employed as a cashier in a large retail store for several years before being promoted to a supervisory position. She alleged that her new supervisor began to find fault with her work performance and to belittle her in front of other employees and customers. She also made frequent references to racial problems in England, and asked pointed questions about the complainant's marriage to a white man. The complainant alleged that she discussed these problems with the manager, but that no action was taken. She finally resigned due to the tension in her work environment, and filed a complaint with the Commission alleging discrimination in employment because of race and colour.

Investigation revealed that other employees had heard the supervisor's remarks and found them offensive. The manager said that he felt he had dealt with the problem

by having the supervisor apologize to the complainant. He stated that he was not aware that the situation had not improved.

In conciliation, both parties agreed to the following items of settlement:

- financial compensation in the amount of $1,000.00 representing earnings lost between the date of the complainant's resignation and the date she began a new job,
- a letter of apology to the complainant,
- a letter of reference,
- assurances to the Commission of the company's policy of non-discrimination and the posting of Human Rights Code cards in public areas of the store.

A white Canadian-born sales clerk alleged that she and a white co-worker had been subject to terms and conditions of employment that were less favourable than those applied to their Chinese co-workers. It was alleged that the company's managers, who were Chinese, paid the white workers less, although their duties were the same. The woman filed a complaint with the Commission alleging discrimination in employment because of race, colour, nationality, ancestry and place of origin.

The investigation revealed evidence in support of the allegations regarding wages. Company records indicated that the white workers were paid considerably less than the Chinese employees, despite the fact that the complainants had better sales experience.

In conciliation, the respondent agreed to compensate the complainants for earnings lost due to discrimination. One complainant received $1,300.00; the other received $600.00. In addition, the employer notified the Commission in writing of changes in policy with respect to discriminatory employment practices.

The complainant, a woman of Pakistani origin, alleged that she had been working as a financial analyst for a large insurance company for several years. She claimed that discriminatory treatment had occurred with respect to promotional opportunities, salaries, increments and training, with employees of British ancestry receiving more favourable consideration in all of these areas. The complainant had received a promotion during her employment with the company, but she alleged that several senior managers had attempted to impede her progress. She left the company for a better job, and filed a complaint with the Commission alleging discrimination in employment because of race, colour, nationality, ancestry and place of origin.

During investigation, the evidence revealed that white employees in the complainant's category had received higher salaries and more extensive training and instruction than she had. Nevertheless, an examination of her performance appraisals revealed that she had made special efforts to take on challenging

assignments and to complete her work ably and on time. Her work performance was judged to be good.

The Commission prepared employee progression charts based upon company records, and they revealed rapid advancement of certain white employees and slow progress of the complainant, despite comparable work performance. In discussions with other employees, it was learned that the complainant's efforts and achievements were not acknowledged or rewarded as often as those of other employees, and they believed that the problem was due to her racial and ethnic origin.

In conciliation, the parties agreed to the following items of settlement:

- financial compensation for the complainant in the sum of $9,000.00 for earnings lost due to discrimination,

- a letter of reference and a statement that the complainant is eligible for rehiring at any time,

- the establishment of a company policy of non-discrimination, with procedural changes introduced to eliminate differential treatment that is contrary to the Code.

The complainant, a black man originally from Trinidad, had worked as a production control clerk at the respondent company for two years before he was promoted to shift leader. He alleged that black employees had to wait longer for promotions because they were passed over in favour of less qualified white workers. In addition, the complainant alleged that he was reassigned to new duties several months after his promotion, without receiving adequate training for the posting. He was later dismissed. His complaint alleged discrimination in employment because of race, colour and ethnic origin.

The evidence revealed that the complainant had not been promoted earlier because other more qualified employees had been successful in previous competitions. Company records showed that there have been black employees promoted where white workers had not: seven non-whites had received promotions in the complainant's department, as compared with 14 whites.

In addition, the complainant had been sent on three training courses, the same number as his white counterparts had taken. The Commission learned that his dismissal was based on his improper supervision of an employee and failure to report for work on several occasions. White employees were similarly disciplined for the same infractions.

When the complaint could not be settled in conciliation, the Commission dismissed the case and provided the parties with the following reasons: The evidence indicated that black employees did receive promotions on an equal basis with whites, non-white employees at the company did not share the complainant's perception of discrimination and the complainant had a poor work record.

An East Indian man was dismissed from his job as an assembler in a large manufacturing company. He alleged that during his two years with the company, he had been assigned to the less desirable shifts and job duties. He filed a complaint with the Commission alleging dismissal and discriminatory terms and conditions of employment because of race, colour and ethnic origin.

The evidence indicated that the complainant's work performance and levels of productivity were poor. The employer placed him in three different departments over the two-year period, in order to evaluate his performance in duties more in keeping with his skills and experience. Although the complainant received several written warnings about his performance, there was no improvement. In addition, several foremen testified that the complainant refused to work cooperatively with his co-workers, and frequently left tasks for other workers to complete.

When a settlement could not be reached in conciliation, the Commission dismissed the complaint and provided both parties with the following reasons: The evidence showed that during the complainant's period of employment, he was rated between average and unacceptable in various placements at the company. He worked under several foremen, all of whom gave unfavourable evaluations of his work performance.

A man originally from Portugal had been employed for four years as a housekeeper in a hotel. He alleged that he had been disciplined unfairly by a new supervisor, and that six months after the harassment began, he was forced to resign his position. His complaint alleged discrimination in employment because of ethnic origin.

The evidence revealed that the complainant had received several written warnings about poor work performance. The employer informed him that if the problems continued, he would be placed on one month's probation. The company's personnel records showed that the complainant's supervisor had written him a letter setting out several regulations he had not observed, including lengthy unexplained absences from his work site.

When conciliation efforts failed to achieve a settlement, the Commission reviewed the complaint. The employer had agreed in conciliation that the complainant would be fairly considered for any openings for which he was qualified at other hotels in the chain. The Commission dismissed the complaint because the evidence showed that the complainant's ethnic origin was not a factor in the employer's treatment of him.

Sex, Marital Status

Two women had been employed as casual workers in a branch of a large retail chain. They had been assigned on a regular basis to a 40-hour week since starting with the company, but were later informed that their hours would be cut to 20. The women alleged that the hours of temporary employees, all of whom were male, were not cut back. In addition, they stated that female casual employees were laid off more frequently than the male temporary employees, in spite of the fact that their duties were the same. Their complaints alleged discrimination in employment because of sex.

During investigation, documentation supplied by the employer confirmed the complaint allegations. The evidence indicated that the two complainants, as well as other female employees, had consistently been given fewer hours and were the first to be laid off in periods of work shortages.

In conciliation the parties reached agreement on the following items of settlement:

- the hours of work assigned to casual and temporary employees would be equalized,
- the employer would engage in an affirmative action program to increase the employment opportunities of female employees,
- the complainants would be offered positions as temporary employees, and each would receive $325.00 in compensation for earnings lost due to the reduction in their hours,
- the employer provided assurances of this policy of non-discrimination.

A woman alleged that she responded to a newspaper advertisement for a utility worker with a large manufacturing firm. Several weeks later, she and three male applicants were interviewed for the position. She claimed that an employee in the personnel department told her that if she were hired, she would be the first woman in the job. A week later, she was informed that her application had been rejected, but she was told that the company had openings for "female packers." Her complaint alleged discrimination in employment on the basis of sex.

During investigation, it was determined that the company had two entry level positions - one as packer and one as utility worker - into which persons hired were channelled according to sex. A review of application forms and hiring into the two categories revealed that female applicants with the same experience as their male counterparts were never placed in the "utility worker" category.

In conciliation, the respondent agreed to compensate the complainant in the amount of $3,900.00 for earnings lost as a result of discrimination. Also, the respondent wrote a letter to the Commission containing assurances of its policy of non-discrimination, and posted Human Rights Code cards on the business premises. The Commission will monitor the respondent's hiring practices after one year to ensure continuing compliance with the provisions of the Code.

Two married women had been employed as police constables on a municipal police force for 10 years. They alleged that they had experienced discriminatory treatment in promotional opportunities and work assignments, and were denied desirable cross-postings. They claimed that they were not allowed to go on the regular shift system to which male constables were automatically posted, in order to be protected from

dangerous situations. Their complaints alleged discrimination in employment because of sex and marital status.

The Commission called a meeting which was attended by both complainants and senior officials of the police commission and the police department. Evidence indicated that certain ranking and senior members of the force felt that women were not suited to police work, although the complainants believed that these attitudes were not shared by the chief of police. Documentation revealed that the women were not treated equally with respect to work assignments and consideration for promotion.

During conciliation discussions, the senior officials were anxious to resolve the complaints and were receptive to the Commission's recommendations for preventative measures to deal with systemic discrimination as it affects female applicants and employees. The following items of settlement were agreed to:

- constructive action will be taken to ensure equality of opportunity with respect to males and females in all phases of the recruitment, hiring and employment relationship. A management directive to all staff will set out this policy,

- a human rights seminar will be presented to all members of the force,

- a qualified, independent woman will be assigned to the promotional selection committee,

- an improved recruitment, evaluation and hiring system will be established with respect to applications for promotions and cross-postings,

- a written statement will be placed on the files of the complainants that the problems they encountered early in their career were not of their making and will not be held against them in their career advancement.

The complainant had been hired as an insurance agent as part of a sales representative-in-training program offered by her employer. She alleged that her supervisor began to subject her to unwelcome sexual advances shortly after she started her training. She stated that as soon as she confronted the supervisor about his behaviour, he became overly critical of her work performance. She also alleged that she was called in by the manager, who told her that he had had reports that she was uncooperative and unwilling to accept instructions.

After she explained the problem to the manager, he transferred her to another section. She soon realized that she was missing the valuable training, knowledge and expertise that had been available to her in her former posting. She then resigned her position.

Her complaint alleged discriminatory terms and conditions of employment and constructive dismissal because of her sex.

During investigation, it was learned that the supervisor had made similar advances toward other female staff. Also, several senior managers testified to the Commission that the reassignment of the complainant to another department placed her at a competitive disadvantage with respect to training opportunities.

In conciliation, the parties agreed upon the following settlement:

- a memo to staff regarding the company's policy prohibiting sexual harassment,
- a letter of apology to the complainant and written assurances to the Commission of the company's non-discriminatory policy.
- a letter of reference for the complainant,
- financial settlement of $6,500.00 in compensation for earnings lost due to discrimination and insult to dignity.

The complainant had been employed for several months as a bookkeeper in a large drug store. She alleged that she had received numerous sexual advances from the owner-manager, in spite of the fact that she made repeated requests to be left alone. She finally chose to resign from the company. Her complaint alleged discrimination in employment on the basis of sex, and constructive dismissal from her employment.

During the investigation, the employer denied the allegations, and said that the complainant had had a poor work record. However, the Commission had contacted five former female co-workers who stated that the respondent had made similar verbal and physical advances towards them. All cited the harassment as the reason for leaving their jobs. Once this evidence was brought out, the following items of settlement were agreed to among all parties during conciliation discussions:

- the respondent agreed to send a memo to staff, outlining the company's policy against sexual harassment and other forms of discrimination,
- the complainant received a cheque for $3,800.00, of which $2,200.00 represented compensation for earnings lost due to discrimination, and $1,600.00 as compensation for insult to her dignity.

A woman alleged that she was laid off from her position as a security guard in a large manufacturing firm after six months of employment. Although her employer had told her that several employees had been laid off due to work shortages and a budget cut, she alleged that two male guards with less seniority than she had were later recalled. She filed a complaint alleging discrimination in employment because of sex.

During the investigation, the Human Rights Officer asked the complainant to provide additional information about her allegations, and to inform the Commission about any inquiries she had made about the matter to the company's personnel manager and her union representative. However, in spite of the fact that registered letters were sent to the complainant, and telephone messages left, she did not respond to the Commission's inquiries.

Accordingly the complaint was dismissed under Section 33(1)(b) of the Code because the complainant appeared to be disinterested in the complaint procedure and outcome.

Handicap

A man with an epileptic condition had worked for the respondent since 1976. He alleged that until August of 1982, he encountered no problems that were associated with his epilepsy, but one day he had a seizure which caused him to black out and fall to the floor. He believed the seizure to have been caused by a low dilantin level, and that an increase in his medication would eliminate the seizures. Shortly thereafter, his employer removed him from his position as a brazer/welder to a non-classified position in the warehouse. The complainant felt that the move would threaten his job security and affect his seniority rights. He filed a complaint with the Commission alleging discrimination in employment because of handicap.

Investigation revealed that this had been the first time the complainant had suffered a seizure at work. The employer's main concern was with the safety of the complainant, since his job involved working with a blowtorch. The respondent also said that the complainant's security of employment and seniority rights were not threatened.

During the Fact Finding Conference, the respondent stated that the company was to make the necessary changes to the work area in order to make it safer for the complainant to work, as long as the complainant was prepared to cooperate and agree to wear the required protection, such as a leather apron and a face mask to prevent him from being injured by the flame from the torch. Prior to this, the respondent wanted an independent medical report on the complainant's medical condition, for which the the company was prepared to pay the cost.

The complainant then said that he was quite prepared to stay on the job he presently had as long as he had job security and maintained his seniority. This was agreed to by the respondent in conciliation. The issue was raised of what would happen to the complainant if he was "bumped" by someone with more seniority in the event of a lay-off situation. The logical place for the complainant to go in such a situation would be to use his seniority to "bump" into the stainless steel/furnace area. Because of safety considerations, the Commission viewed the area. The Commission and the respondent agreed that if some additional guards were built, an action which appeared necessary for the protection of all employees, then the area would be safe for the complainant to work in. This accommodation could be made without causing undue hardship in terms of costs to the respondent.

As a further means towards resolving the complaint, an additional proposal was agreed to: the respondent and the complainant, with the assistance of a member of the union executive, agreed in principle to define, as much as is possible and practicable, those job functions which may or may not put the complainant at risk in light of his epileptic condition.

Age

The complainant, a 56-year-old male, alleged that he had worked as a salesman for his company from 1947 to 1964, at which time he was promoted to a supervisory position. In 1980, the company was purchased by the respondent. Shortly after the takeover, the complainant's services were terminated by the new sales manager. He filed a complaint with the Commission alleging discrimination in employment because of age.

During investigation, the evidence indicated that the new management had cut back the number of supervisory personnel for economic reasons. Out of the four supervisory positions in the company, it was decided to make the complainant's position redundant. The sales manager said that the complainant's performance as a supervisor had been less competent than that of the three supervisors who were retained.

However, the Commission interviewed other company representatives, who claimed that the complainant had been an effective supervisor and loyal employee. Some felt his release was related to his age. An examination of personnel records revealed that, of the four supervisors, the complainant had been consistently evaluated as the best of the four. He was said to have high management potential. The ages of the other three supervisors were 33, 37 and 44.

In conciliation, this evidence was reviewed with all parties to the complaint, who agreed to the following items of settlement:

- reinstatement of the complainant to a position similar to his former position without loss of seniority or vacation credits,

- compensation to the complainant in the amount of $6,200.00 for earnings and benefits lost due to discrimination,

- written assurances to the Commission of the company's policy of non-discrimination and posting of Human Rights Code cards on the business premises.

A 57-year-old man filed a complaint alleging that two years before, his former employer had refused to transfer him to another department because of his age. However, he did not contact the Commission at that time, and later left the company of his own accord for other employment. The Commission's inquiries determined that his main concern appeared to be a salary freeze applied to all employees in his present firm.

The Commission reviewed the case under Section 33(1)(d), which empowers it to refuse to deal with a complaint if the facts on which it was based occurred more than six months before it was filed. The Commission decided to dismiss the case because the delay in filing did not appear to have been incurred in good faith, and the Commission believed that substantial prejudice would result to the company if the complaint proceeded.

Creed

The complainant began employment as a shipper/receiver with a manufacturing firm. Because of his religious beliefs, his employer agreed to allow him to take off eight obligatory holy days as vacation time during his first year of employment. In the second year, however, he alleged that the respondent told him that, because of new scheduling requirements, it would no longer be possible for employees to split up their vacation periods, and that any leave for religious reasons would be treated as a leave of absence without pay. When the complainant returned from his first religious holy day, he was told that he had been dismissed. He filed a complaint with the Commission, alleging discrimination in employment because of creed.

In the Fact Finding Conference, the Commission pointed out that if the result of applying a general employment regulation is to exclude members of a religious group, discrimination has occurred unless the employer can demonstrate that the regulation is reasonably necessary to the business operation. The employer stated that his business would suffer if the complainant's duties were not carried out on a day-to-day basis, but he did agree that he could assign another worker to those duties occasionally, if he had sufficient notice.

Accordingly, the following settlement was reached in conciliation:

- immediate reinstatement of the complainant to his former position,

- monetary compensation in the amount of $750.00 representing earnings lost due to discrimination,

- agreement that the complainant would be allowed absences from work, to be taken as vacation, in order that he may observe up to 10 holy days each year. The complainant agreed to provide the employer with at least three months' notice of any planned religious absences.

Reprisal

In 1981, the complainant, a part-time restaurant helper, had filed a complaint with the Commission alleging racial discrimination on behalf of an East Indian co-worker. The management of the company had responded to the complaint by accusing the complainant of being irresponsible and of expressing personal opinions with no basis in reality. They had further said they could not accept these "amateur legal activities" of the complainant.

The following year, the complainant went on vacation for the summer and, as she had done the previous year, applied for re-employment in September. This time she was told she would not be rehired because she "constantly complained." She filed a complaint with the Commission alleging reprisal action for taking part in a complaint under the Code.

During investigation, the respondent maintained that the complainant was not rehired because she was always complaining about the company, the work and her fellow employees.

However, the complainant's allegations were supported by the evidence. The investigation into the race complaint had revealed a disturbing situation and her complaints to management were actually acted upon and brought about general improvement at the work place.

The Commission had evidence that there had been no criticism or concerns about the complainant's attitude or performance until after she had made the complaint to the Commission.

In conciliation, the following items of settlement were agreed to:

- $200.00 in compensation for earnings lost due to discrimination, and $750.00 in compensation for insult to dignity,

- an offer of the next available job for which the complainant qualified,

- an agreement on the part of management that they would institute a grievance policy for employees, in order to resolve problems, and to dissipate any fears of retaliation against employees who take part in a complaint under the Code.

HOUSING

Race, Ethnic Origin

A Native Indian woman telephoned in response to a newspaper advertisement for an apartment for rent, and made an appointment with the owner to view the accommodation. She alleged that when she arrived at the address, the owner asked her where she came from. When she replied that she had been living on a nearby reserve, the owner refused to show her the apartment, claiming that he had experienced problems with other Native Indian tenants in the past. The woman's complaint alleged discrimination in housing accommodation because of race, colour and ancestry.

Shortly thereafter, a black family visited the same apartment building after seeing a newspaper advertisement. They alleged that when they asked to see the unit, the owner told them, "I don't rent to blacks." They filed a complaint with the Commission alleging discrimination in housing accommodation because of race and colour.

The respondent's daughter-in-law accompanied him to the Fact Finding Conference and there was agreement among all parties that discrimination as alleged had taken place. The owner's daughter-in-law expressed her sincere apologies to the complainant for the owner's actions, and indicated that she had made him aware of their seriousness. In conciliation, the respondent agreed to write letters of apology to all of the complainants, as well as a letter of assurance to the Commission. The parties received a cheque for $100.00 in compensation for insult to their dignity. Because both families had located suitable accommodation, the settlement did not include an offer of the next available apartment.

A man who was born in India alleged that he replied by telephone to a newspaper advertisement for an apartment. He was told that several apartments were available, and was invited to view the premises. He claimed that when he went to the apartment building, the rental manager asked him when he wanted to move in. The complainant replied that he wanted the accommodation in one month. He alleged that the manager told him that there was nothing available that soon, but he was not asked to leave his name or fill out an application form. He also noticed that the same advertisement ran for several days after his inquiry. He filed a complaint with the Commission alleging discrimination in housing accommodation because of race, colour, ancestry and place of origin.

The investigation revealed that the respondent company had recently purchased two apartment buildings, both of which were undergoing renovations. Only half the suites were ready for occupancy, and there were no vacancies available on the date which the complainant specified. The rental manager also told the Commission that the company was reluctant to rent apartments to persons who wanted them on short notice, believing that if they had not given their present landlord the required two months' notice, they might not be responsible tenants. In addition, the company assumes that persons who want to be considered for a later occupancy will ask for an application form.

The Commission also learned that of 150 occupied apartments, 27 were rented by non-white tenants. None of them reported having experienced any discrimination by the property management. Also, the newspaper had a contract with the respondent to run the ad at a reduced rate for six months.

These findings were reviewed and discussed in a conciliation meeting involving all parties. It was agreed that the rental manager had treated the complainant in a cursory manner, which led him to believe that discrimination had taken place. He was satisfied with the investigation findings, and the complaint was settled on the basis of written assurances from the respondent that he acted in compliance with the provisions of the Code.

Sex, Marital Status

A woman alleged that shortly after moving into a new apartment, the landlord, who also lived in the building, began to make sexual advances towards her. When she made it clear to him that these approaches were unwelcome, he threatened her with a 50 per cent rent increase and told her that if she was not prepared to pay it, she would be evicted. She filed a complaint with the Commission alleging harassment by the landlord on the basis of sex and denial of equal treatment in housing accommodation because of sex.

After the landlord was served with the complaint, he indicated that he wanted to enter conciliation immediately. In conciliation negotiations, the landlord rescinded the eviction order and lowered the amount of the rental increase. He provided the complainant and the Commission with assurances that he would fully comply with the provisions of the Code in future.

A 22-year-old single male telephoned in response to a newspaper advertisement for a two bedroom apartment and was invited to view the accommodation. He alleged

that the rental agent asked his occupation, and he replied that he was a university student. The agent stated that it was management's policy not to rent to single students. The complainant was not asked to produce any evidence of his financial status or a reference from his previous landlord. He filed a complaint with the Commission alleging discrimination in accommodation because of age and marital status, because he believed that a policy against renting to students adversely affected persons aged between 18 and 25.

The Commission contacted the owner of the building, who confirmed the existence of the policy. The respondent requested that conciliation negotiations be entered into immediately. In conciliation, the respondent agreed to inform all staff that the policy has been abolished, to invite the complainant to apply for the next available rental accommodation, and to compensate him in the amount of $150.00 for out-of-pocket expenses incurred as a result of discrimination. In addition, he agreed to send the Commission written assurances of the company's policy of non-discrimination and to post Human Rights Code cards in all of his apartment buildings.

Handicap

The complainant, who is in a wheelchair, attended the respondent university. She alleged that she had spent her first two years as a non-resident student, and wished to complete her degree in residence. However, she was unsuccessful in her application for accommodation in residence. She was told that no renovations had been made for female students with a handicap. All remodelled accommodation for disabled students was on the main floor and it was all occupied by males. The complainant's suggestion that the respondent turn the main floor into a co-ed floor was rejected.

The respondent alleged that renovations had always been at the request of the Vocational Rehabilitation Services, which supplied the necessary funds on behalf of its clients. Although Vocational Rehabilitation Services stated in a letter that it would be beneficial for the complainant to be in residence, it did not say it was necessary for her to do so in order for her to continue her education, since she was able to commute to her classes.

During the investigation, the respondent stated that fire regulations compelled the university to confine residents in wheelchairs to the first and second floors. At the time in question, all renovated rooms on these floors were occupied by males. There were two females in wheelchairs on the fourth floor, but their rooms had not been modified. The complainant was the first woman to request specialized residential accommodation at the university. The respondent also explained that making the first and second floors co-ed was a decision to be taken in conjunction with the student committee, whose members had been away for the summer when the complainant suggested making the first floor co-ed. The complainant stated that much of the information mentioned at the Fact Finding Conference had never been explained to her.

As a means of resolving the complaint, the following proposals were agreed to:

- the complainant would be provided with residential accommodation as of May 1983 until such time as she has completed her degree,

- the complainant would provide a letter from a competent authority indicating that living in residence would be beneficial to her studies,

- the respondent would provide appropriate accommmodation for disabled female students in accordance with the demand ratio,

- the respondent provided the Commission with a letter of assurance of its policy to comply with the provisions of the Code.

SERVICES AND FACILITIES

Race, Ethnic Origin

A black woman alleged that a Grade 8 substitute teacher had made a racist remark to her daughter following a class. She filed a complaint with the Commission on behalf of her daughter, alleging discrimination with respect to services and facilities on the basis of race, colour and ancestry.

The Commission's officer discussed the complaint with the teacher concerned and the principal. The teacher admitted making the comment.

In conciliation, both the teacher and principal agreed to write letters of apology to the student, and the principal reprimanded the teacher for her conduct. In addition, the principal requested the school board not to send the teacher to his school again, and the board undertook to monitor her teaching performance in any other school to which she will be assigned.

A black man and his wife, who was white, visited a hotel at which he had been a guest on numerous occasions over past years. They were accompanied by a black male friend and his white fiancee. He alleged that as they approached the restaurant, a hotel employee informed them that black persons could not be served, but that the two women were welcome. Both couples left, and the next day, they filed a complaint with the Commission alleging discrimination with respect to services and facilities because of race and colour.

During investigation, the hotel manager stated that the hotel had recently changed owners, and the new management had instituted a policy to refuse service to undesirable persons, regardless of their race, in order to ensure that the business would not suffer. He claimed that white persons were refused service as often as black persons.

However, the complainant provided the names of a large number of witnesses both white and black, who confirmed the existence of a "whites only" policy at the hotel. The manager finally admitted that such a policy had been in effect, but denied that he had initiated it. In conciliation, the parties agreed to:

- a written declaration by the respondent to the Commission and to all hotel employees that

exclusionary practices on a basis of race would not be tolerated, posting of Human Rights Code cards on the premises, and a written apology to the complainant and his wife, and to the other couple,

- compensation to the complainant in the amount of $300.00 for insult to dignity.

Handicap

The complainant, a man in a wheelchair, alleged that he applied to his city's special bus service for the handicapped for transportation to the university, which is 20 kilometres from his home. He was informed that the buses went to and from the campus only two mornings a week. The regular transit service, however, made daily runs to the university. The special service could make unscheduled trips, but at a cost of between $20.00 and $40.00 an hour. The man filed a complaint with the Commission alleging discrimination with respect to services and facilities because of handicap. His complaint also cited the difficulties which handicapped persons experience in finding affordable transportation on evenings and weekends.

The respondent explained that the two transit systems are separate systems. One is a route system while the special system is a door-to-door service for those who cannot use the regular service. The respondent has a planning committee that includes four handicapped members. The committee discusses any problems, complaints and suggestions to improve the bus service. The respondent alleged that it would be impossible to run the special system for the same amount of hours as the regular system, because of both low customer demand and cost factors.

During the Fact Finding Conference, the respondent agreed that the hours of the special transit system are inconvenient for many of its users. As a means towards resolving the complaint, the following proposals were agreed to:

- fares for the special system will be the same as the regular transit,

- a full users survey will be conducted to see if a need exists for Saturday service and arrangements will be made to extend the hours of the bus service by one hour on Thursday evenings to enable individuals to attend a show or other outings,

- pamphlets about the service will be distributed to Chamber of Commerce members and the name of the service and phone number will be painted on the buses,

- a two-way radio will be installed in the buses, to expedite information to the drivers about changes in routes or schedules,

- if a substantial number of people request transportation to the university, the committee will consider scheduling more frequent trips there.

DECISIONS OF BOARDS OF INQUIRY

1982-83

Aragona and Elegant Lamp Company Limited, Fillipitto

Mrs. Aragona's complaint alleged several incidents of sexual harassment on the part of Mr. Fillipitto, the plant manager in the company where she had worked for 10 months. She claimed that the harassment created a demeaning work atmosphere, and caused her to resign her position. Her complaint alleged discriminatory terms and conditions of employment and dismissal from employment because of sex.

During the hearing, Mrs. Aragona told the inquiry that she quit her job following a meeting with the president of the company, at which she raised these allegations with him for the first time. She said she was given no indication that anything would be done in response to her allegations.

Employees of the respondent testified that the work atmosphere at the company was generally pleasant and cheerful, with Mr. Fillipitto and his staff frequently exchanging banter and teasing, often with sexual connotations. These witnesses said that Mrs. Aragona apparently did nothing to discourage this conduct. Based upon the evidence, the board concluded that there was no suggestion of coercion of Mrs. Aragona to reciprocate a social relationship.

It was the board's opinion that sexual references that are crude or in bad taste are not necessarily sufficient to constitute a breach of the Code. The board stated that conduct of a subtle nature must be evaluated in accordance with an objective standard, and it was found in this case that the proven conduct was freely accepted and enjoyed by the other employees. Thus, the board chairman stated that the behaviour complained of "could not reasonably be perceived to create a negative psychological and emotional work environment," and the complaint was dismissed.

Bains and Ontario Hydro

Mr. Bains, a 40-year-old man of Indian origin, alleged that he was refused employment as a welding technician with Ontario Hydro because of race, colour, nationality, ancestry, place of origin and age.

He claimed that he filled out an application form and was then called for an interview. Evidence introduced at the board hearing indicated that the application form asked his date of birth, and his reply was circled on the form. Mr. Bains stated that during his job interview, he was told that most junior level technicians were younger than he was. He was then asked if he would be able to adjust to working with that kind of group, given his past experience and maturity. Mr. Bains replied that he didn't see any problems.

The board heard further evidence from representatives of the respondent regarding the screening process and the qualifications of the other applicants for the position. On the basis of the totality of the evidence, the board found that the employer did not intend to discriminate against Mr. Bains because of his age, nationality or place of origin. Rather, the evidence indicated that the respondent had some concern about Mr. Bains' ability to adapt to living in a camp environment with younger men while at the same time adjusting to a change in his vocation.

Additional evidence revealed that the employer had selected a more highly qualified candidate for the position.

The complaint was dismissed.

Ballantyne and Molly 'n' Me Tavern

Ms. Ballantyne applied for employment as a waitress with the respondent tavern. Her complaint alleged that she was not hired because she refused to wear a topless costume while waiting on tables, a condition that was not required of male employees performing the same duties.

At the hearing, the respondent argued that the dress requirement did not discriminate with respect to conditions of a job held by both males and females. Rather, it created a new job category, available only to females.

The board of inquiry did not support this argument, on the grounds that the establishment of separate job descriptions in order to immunize an employer from an allegation of discrimination would undermine the purpose and provisions of the Code. In addition, the board chairman stated that an employer should not be permitted to convert female occupants of traditional service and clerical job categories into entertainers through a requirement that they wear immodest clothing.

The board did recognize that conditions of employment may exist that have a provable and substantial commercial objective, that the entertainment aspect of the job is essential to it, and that only members of one sex can provide such entertainment. This was not found to be the case in Ms. Ballantyne's situation.

The complaint was upheld. The board found that where males and females occupy the same position of employment, the imposition of a more burdensome requirement on female employees relating to dress or appearance constitutes discrimination under the Code. The respondent was ordered to pay the complainant the amount of $222.00 representing loss of employment opportunity, and $100.00 in compensation for insult to her dignity.

Bosi and the Township of Michipicoten

Mrs. Bosi alleged that she was refused employment in the accounts department of the Township of Michipicoten because her husband was a member of the Township's police force. Believing that the employer's hiring policy had a more serious impact upon women than men, she filed a complaint under the former Human Rights Code alleging discrimination in employment because of sex and marital status.

The board found that the employer had taken into account the complainant's marriage to a Township employee. However, evidence indicated that the duties of the job in question involved processing expense account claims and handling sensitive documents relating to all Township functions. Therefore, the policy regarding marriage between employees was found to be reasonable and bona fide, since it was designed to avoid a potential conflict of interest among members of staff.

Because the complaint also alleged discrimination because of sex, the board addressed the question of whether the establishment of a policy against hiring

spouses of employees would affect women more adversely than men. The board observed that the Township had no blanket anti-nepotism rule, and it found no evidence that in cases such as this one, the policy would affect females more than males. The complaint was dismissed.

Bruton, McInnis and M.G.H. International Limited

The two complainants alleged that they had applied, through an employment agency, for positions as industrial nurses with M.G.H. International Limited. It was to be a job-sharing arrangement with each woman working 20 hours a week.

On the first day of work, Mrs. McInnis reported for duty to a first aid trailer near the company's construction site. Evidence indicated that the first day proceeded uneventfully, with five men being treated for minor ailments. On the second day, Mrs. Bruton worked her shift, and, like Mrs. McInnis, was instructed to send her patients back to the job site as quickly as possible, and not to socialize with the construction workers. Both women were complimented on their work performance at the end of their shifts.

The following day, Mrs. Bruton alleged that she was informed that both nurses were being replaced by a full-time male paramedic. She claimed that she learned that company management felt attractive female nurses would be disruptive and would interfere with the workers' productivity. The two women filed complaints alleging discrimination in employment because of sex.

During the hearing, company representatives claimed that the decision was based on a concern that the women would be at risk on a remote construction site. They also claimed that the company wanted to hire a less qualified male paramedic in order to save money.

The board found, however, that the wages paid to the new male employee were considerably higher than those paid to the two nurses. The board also determined, on the basis of the evidence, that workers' productivity had not decreased because of visits to the nursing station during the three days of the complainants' employment. Nor was any evidence produced that sex was a bona fide occupational qualification or requirement for the position in question.

The complaints were upheld. The respondent was ordered to pay to each complainant the sum of $3,090.00 in compensation for lost earnings and injury to dignity, and to post Human Rights Code cards on all of its business and construction sites in Ontario.

Iancu and Simcoe County Board of Education

Mr. Iancu, a man of Rumanian origin, had been employed as a teacher in one of the schools of the respondent for a two-year probationary period. During the spring term of his second year, he alleged that he was informed that he was not being recommended for a permanent contract with the respondent Board. Mr. Iancu believed that the main reason for his dismissal was because he was not of Franco-Ontarian descent. The school is in Penetanguishene, a community with a large Franco-Ontarian population. He therefore filed a complaint against the school Board alleging discrimination in employment because of nationality, ancestry and place of origin.

During the hearing, the board heard testimony from staff of both the school and the Board of Education. In the view of the board of inquiry, the evidence indicated that although Mr. Iancu's performance as a teacher was good during his first year of teaching, it had deteriorated to such a degree in the second year that a large number of students were withdrawing from his classes.

The board found no evidence of discrimination against the complainant by the school principal or the trustees of the Board of Education. However, it was the board's opinion that the principal did not comply with school Board policy to give a reasonable warning to the complainant regarding his work performance, and a reasonable time in which to rectify the problem. The inquiry chairman stated that although the complainant was aware of this problem, he had not received reasonable notice of its seriousness from the standpoint of his achieving permanent status as a teacher. The complaint was dismissed.

Jones, Lindo, Paris and the Municipality of Metropolitan Toronto, Cluff, Malley

The three black complainants alleged that they were discriminated against at a public golf course in Toronto, because of their race and colour.

Their complaints alleged that as they approached the first tee, the starter sent a fourth player, who was white, to join the group. The complainants said they did not want a foursome and an argument between them and the starter took place. The three men alleged that on leaving the club, the golf pro told them, "This will be the last time you blacks play at this golf course."

During the hearing, the respondent testified that the three men had been told that it was a club rule that on busy days, groups of four must play. If a group of two or three insists on playing alone, they may do so, but they must wait until all the foursomes have gone ahead of them. The complainants claimed that they had been unaware of this rule.

Evidence heard by the board indicated that persons of all racial backgrounds played at the club. The chairman accepted the evidence of the respondent that the foursome rule is a common practice at busy public courses. The complaints were therefore dismissed.

The board chairman observed, however, that the club's rules should be more clearly displayed, in order to avoid any misunderstandings about them.

McPherson, Ambo, Morton and 408720 Ontario Limited ("Mary's Donuts"), Dosboian

The three complainants alleged that they were subjected to sexual harassment by the owner/manager of the respondent company. They claimed that they were subject to his sexual advances as a condition of employment, and found it impossible to continue working for him. They resigned their positions and filed complaints with the Commission alleging discriminatory terms and conditions of employment and constructive dismissal from their jobs on the basis of sex.

At the hearing, other former employees of the respondent and several additional witnesses corroborated the evidence of the complainants. The respondent alleged that they had resigned because they objected to his criticism of their work performance. The board found no difficulty in believing the testimony in support of

the complaint allegations: "Even though Mr. Doshoian knew that the complainants objected to his sexual advances, he persisted in his attempts and made their subjection to his conduct a term or condition of their employment." Moreover, the board found a causal connection between the harassment of the complainants and their loss of employment opportunity.

The board ordered the respondent to cease and desist from the sexual harassment of its employees. It also ordered that Mrs. Ambo receive the amount of $2,500.00 in compensation for insult to her dignity and $75.00 representing earnings lost due to discrimination, Ms. McPherson receive $1,000.00 in compensation for mental anguish and $500.00 in compensation for lost earnings, and Mrs. Morton receive $500.00 in compensation for mental anguish.

Rand, Canadian Union of Industrial Employees and Sealy Eastern Limited

Both Mr. Rand and his union alleged that he was dismissed by the respondent for refusing to work on Saturdays. As an orthodox Jew, his religion prevented him from working on the sabbath, an obligation he claimed his employer was aware of when he was hired a year before.

In his complaint, Mr. Rand alleged that a new plant manager asked him to work overtime on Saturdays, in order to undertake further training. He asked to work evenings or Sundays instead, but Sealy refused and offered him an alternative position that would not involve work on Saturdays. When Mr. Rand turned it down, he was dismissed. His complaint alleged discrimination in employment because of creed.

During the hearing, respondent witnesses claimed that the employees who were to train Mr. Rand could do so only on Saturday. The complainant and a union representative testified, however, that the additional training program was not necessary because his work performance was competent.

With respect to the offer of alternative employment within the plant, Mr. Rand testified that the position would be unsuitable because it was physically demanding and he had once suffered a back injury.

On the basis of the evidence, the board concluded that there was no business necessity to hold the training program on Saturdays; it could have taken place during or after regular working hours. It was the board's view that the plant manager did not want Mr. Rand on staff, and knowing of his inability to work on Saturdays, made an arrangement which he knew Mr. Rand would be unable to accept.

The board decided that the requirement to work on Saturdays had a discriminatory effect on the complainant. The respondent was ordered to reinstate Mr. Rand, with no loss of seniority, and under no conditions that would be incompatible with his religious beliefs. In addition, the board ordered the respondent to pay the complainant the amount of $1,500.00 in compensation for insult to his dignity.

Rawala, Souza and the DeVry Institute of Technology

Two students of East Indian origin had been involved in a cheating episode with a third student, who was white. They alleged that they were punished more severely than the white student, and believed that this treatment was based upon their racial

and ethnic origin. They filed a complaint with the Commission alleging discrimination with respect to services and facilities because of race, colour, nationality, ancestry and place of origin.

During the hearing, the respondent claimed that the Commission lacked jurisdiction in these complaints because its services were not public, within the meaning of the former Human Rights Code. The board reviewed evidence on the issue, and decided that DeVry was a public service or facility, on the following grounds:

- The college advertises its services and facilities broadly in the mass media.

- At DeVry, the screening and selection of applicants is based on universal, non-personal considerations.

- DeVry's admissions criteria are not used to establish an exclusive or private institution. Rather, the criteria are designed to permit the students to take successful advantage of the services and facilities offered.

- A private source of funding, rather than public, is not sufficient to bring a service or facility beyond the reach of the Code.

The board then turned to the evidence on the allegations. The college's manual of administration outlined disciplinary measures for the type of breach which the three students had committed. College officials testified that an internal investigation had revealed that the two complainants' roles in the cheating episode constituted a more serious offence than that of the third student, and it was college policy to impose a more serious penalty for the type of misconduct in which the complainants had been involved.

The board found that the differential treatment was not related to discriminatory factors, and the complaints were dismissed.

Styres and Paiken

Ms. Styres, who is a Native Indian, learned of a vacant two-bedroom apartment through friends who lived in the respondent's building. She alleged that she and a friend went to the rental office to inquire about the accommodation. They agreed to rent the unit for $165.00 a month, and paid a $20.00 deposit to hold it. With the superintendent's permission, they bought cleaning supplies and spent a day cleaning the apartment.

The complainant claimed that the two women moved into the apartment the following day. Having done so, they went to the rental office to pay the balance of the first month's rent plus half the last month's rent, as had been agreed. The superintendent introduced them to the building owner, Mr. Paiken, who said he wished to discuss the terms of the agreement with them in the new apartment, which was by now clean and furnished. Ms. Styres alleged that Mr. Paiken then asked the women if they were Canadian Indians. When they replied that they were, he said that he didn't want to rent to Indians because of bad luck with an Indian tenant in the past.

When the two women accused him of prejudice, he agreed to rent them the unit on the condition that they pay him two months' rent in advance and provide him with the names of two highly respectable citizens who would pay their rent if they fell in arrears. Ms. Styres said that although she could meet these conditions, she was so humiliated by the encounter that she and her friend moved their furniture out of the apartment the following day. Ms. Styres then filed a complaint with the Commission alleging discrimination with respect to housing accommodation because of race, colour and ancestry.

During the hearing, several tenants stated that similar conditions of occupancy had not been imposed upon them. The complainant testified that she was never asked about her income, ability to pay, or prior record as a tenant. The respondent did not deny the complaint allegations during his testimony.

The board decided that the evidence clearly established that the respondent had imposed different terms and conditions of occupancy on the complainant because she was a Native Indian. The respondent was ordered to pay the complainant the sum of $500.00 in compensation for insult to her dignity, and $90.00 representing out-of-pocket expenses incurred because of discrimination. In addition, Mr. Paiken was ordered to send a letter to the Commission indicating his awareness of, and intention to comply with, the provisions of the Code.

Suchit and St. Joseph's Health Centre

Mr. Suchit, a man of East Indian origin, alleged that he was refused employment as director of a new detoxification centre because of race, colour, ancestry and place of origin. He had responded to a newspaper advertisement for the position, and was interviewed. Mr. Suchit claimed that much of the interview centred on issues concerning his race and his ability to handle situations involving clients of various racial backgrounds. He said he was asked whether his former supervisor, his main reference, was Canadian.

During the hearing, the board learned that the hospital's usual screening procedures were not followed in Mr. Suchit's case. While applicants were customarily screened and interviewed by a panel composed of staff from the personnel department and the department which was recruiting candidates, the complainant was interviewed only by a senior hospital official.

Testimony provided by Mr. Suchit's former supervisor revealed that the respondent had asked him questions about Mr. Suchit's ability to handle racial situations. The supervisor considered these questions to be irrelevant, and he said he was taken aback by them.

Mr. Suchit told the inquiry that he had reported his concern to hospital officials in order to give them the opportunity of conducting an internal investigation into his allegations. When he heard nothing from the hospital following two follow-up inquiries, he filed a complaint with the Commission.

The successful candidate for the position for which Mr. Suchit applied stayed in the job only three months. The position was not readvertised; a current hospital employee was appointed to fill it. Hospital officials testified that they did not consider offering the job to Mr. Suchit even though he had been their second choice during the first round of screening.

The board examined the qualifications of the complainant and the successful applicant, and found them to be roughly equal. Nevertheless, evidence indicated that the hospital checked Mr. Suchit's references, but did not check those of the applicant they hired until after they had offered him the job. In the opinion of the board, the employer's behaviour indicated an intent to discriminate against Mr. Suchit on the basis of his race, colour, ancestry and place of origin.

The board ordered the respondent to pay the complainant the sum of $3,350.00 in compensation for earnings lost due to discrimination, and $750.00 for insult to his dignity. In addition, the board of directors of the respondent were ordered to undertake an investigation of its hiring procedures, in consultation with the Commission.

Torres and Royalty Kitchenware Limited ("Queen's Choice"), Guercio

The complainant alleged that during her employment as a secretary with the respondent, she had been verbally and physically harassed by the owner/manager, Mr. Guercio. She claimed that he had dismissed her for resisting his advances after four weeks of employment. Her complaint alleged discrimination in employment because of her sex.

During the hearing, the respondent denied the allegations, but the board accepted the evidence of the complainant and several other former employees who testified on her behalf. The evidence indicated that the respondent hired young female secretaries, submitted them to continuing sexual advances, and eventually fired them if they refused these advances.

The board ordered the respondent to pay the complainant the sum of $1,000.00 in compensation for "the intimidating, hostile and offensive work environment suffered by her because of the discrimination toward her," and $500.00 representing earnings lost due to discrimination. The respondent was also ordered to do whatever is necessary to ensure that its employees are not subjected to sexual harassment.

ROLE AND ACTIVITIES OF THE RACE RELATIONS DIVISION 1982-83

In late 1979, the Race Relations Division of the Ontario Human Rights Commission was formally established to replace the Community, Race and Ethnic Relations Unit. The Division was given a statutory mandate in the new Human Rights Code when it came into effect on June 15, 1982.

The functions of the Race Relations Division, as related to race, ancestry, place of origin, colour, ethnic origin or creed, are set out in section 28(f), (g) and (h) of the Code as follows:

- to enquire into incidents of and conditions leading or tending to lead to tension or conflict based upon identification by a prohibited ground of discrimination and take appropriate action to eliminate the source of tension or conflict,

- to initiate investigations into problems based upon identification by a prohibited ground of discrimination that may arise in a community, and encourage and coordinate plans, programs and activities to reduce or prevent such problems, and

- to promote, assist and encourage public, municipal or private agencies, organizations, groups or persons to engage in programs to alleviate tensions and conflicts based upon identification by a prohibited ground of discrimination.

It is noteworthy that, for the first time, the Commission's role in assisting and encouraging other agencies, including municipal bodies, to engage in race relations work, is stated specifically in the Code. The proactive and reactive components of that mandate with respect to responding to community tensions and conflicts, are expressly mentioned.

On May 6, 1982, the Race Relations Division held a very successful open house at the Ontario Institute for Studies in Education. At that event, which was attended by more than 700 people (community leaders and other representatives from different sectors of our society), the Division's strategy document, "Working Together," was formally launched. A film of the same title produced by the Division was shown.

It is hoped that these initiatives have helped to promote the principle that human rights and harmonious race relations can be achieved only through the efforts of all members of the society. It is the key responsibility of the Race Relations Division to constantly seek, with the assistance of others, innovative and effective ways of promoting successful intergroup relations and of addressing the problems of racial prejudice and discrimination.

The climate of race relations in today's Ontario and the initiatives of governments, private organizations and individuals, reflect concern in two problem areas: conflict

and tension at the community level; and concerns about racism within the major institutions of our society, such as schools, the media, business and industry and the criminal justice system.

The Race Relations Division has responded to these concerns through a variety of strategies and policy initiatives that reinforce the spirit and letter of the Human Rights Code. Response has also been sought through research aimed at developing a better understanding of specific issues and problems.

ACTIVITIES, 1982-83

Community, Race and Ethnic Relations

The Race Relations Division devoted much of its resources to improving the race relations climate at the neighbourhood and community levels during the fiscal year.

In response to concerns regarding the high youth unemployment rate in particular locations in Metropolitan Toronto, and its disparate impact upon the visible minority youth living in those areas, the Division expanded its special Summer Youth Employment Program with the assistance of the Ministry of Labour and various community and agency representatives.

The program, funded by the Ontario Youth Secretariat through its Summer Experience program, was expanded from the previous year to include the community of Jane-Finch in the City of North York and Regent Park in downtown Toronto. Some 100 "disadvantaged" young people from various racial backgrounds were matched with employers in both the private and public sectors and provided with an eight-week first-time summer job experience.

Among the unique features of the program was the provision for in-service job and life skills training. Because of the success of the program in 1982, it is being continued this summer and plans are underway to increase the designated areas to include the Birchmount-Finch community in Scarborough.

The Ontario Youth Secretariat, heartened by the success of the program, approached the Division in the spring of 1983 to explore the possible expansion of the program to include additional employers.

At the suggestion of the Division, the Metropolitan Toronto Police agreed to model a youth employment program after the Division's Summer Youth Employment Program. It is being funded by the Ontario Youth Secretariat. Some 35 youths from various racial and ethnic backgrounds will be placed with the Community Programs sector of the Metropolitan Toronto Police to work, under the supervision of police, with the seniors population. The youths will be selected from areas of the city with a high summer youth unemployment population. They will participate in a first-time job experience combining employment with job and life skills training. The Municipality of Metropolitan Toronto and the Seniors' Volunteer Agency Network have assisted in the program.

In response to an increase in community tensions in the Caledon Village condominium community, City of North York, the Division established an inter-governmental task force, comprised of representatives of all levels of government, to work with the condominium board of directors and residents to reduce these tensions. A key objective is to develop responsive condominium management procedures to ensure

the smooth and effective functioning of the units from both a financial and social perspective.

Also in the City of North York, the Division, the Municipality of Metropolitan Toronto and the City of North York have been working together to assist in improving the race and ethnic relations climate in various communities in the area. Through such initiatives as assigning community development workers to neighbourhoods, a number of coalitions have been created to respond to the respective issues and concerns.

When conflicts developed within the Sikh community in Metropolitan Toronto, the Division convened a series of meetings with the leaders of the community with a view to assisting them to resolve the internal disputes that had led to a few unfortunate incidents among several of its members. As a result of the Division's intervention, with the assistance of the police and the Attorney-General, efforts are under way among the Sikh leadership to promote intra-community harmony and to achieve an overall improvement in relations between the Sikhs and the community at large.

In the Borough of Scarborough, the Division co-sponsored a youth conference with the Tropicana Community Services Organization of Scarborough in order to listen first-hand to the concerns of minority youth in that community. Some 150 youths participated in the day-long event, and spoke about such subjects as education, youth employment, family and community participation and police/youth relations. Also participating were numerous agency and institutional representatives, who were able to identify issues and seek solutions that would assist them to improve race relations among the youth and the community at large.

In addition, the Division has provided assistance to the Parkdale Inter-cultural Council, the Chinese Canadian National Council, the Ministry of Citizenship and Culture and the Metropolitan Toronto Committee on Race Relations and Policing, through its representation on their conference planning committees.

In Windsor and contiguous areas, Division staff have been successful in stimulating both community and institutional responses to address race relations problems in that area. Several organizations have been formed, and they are conducting race relations programs in their respective communities. They include the Windsor Urban Alliance on Race Relations, the local chapter of the National Black Coalition of Canada and the Windsor West Indian Association.

At a recent open house in Windsor, sponsored by the Division, some 130 persons attended to hear presentations on race relations issues and to reaffirm the need for the support of different agencies and the community as a whole.

In Kitchener-Waterloo, the Division, working with various agencies and community organizations, formed an ad hoc community relations network to deal with racial tensions in the two cities. This group was formed in response to conflicts that developed when some South Asian families were being harassed by a number of youths. By coming together to organize and coordinate program delivery in the neighbourhood, the group was successful in reducing the tension and in establishing a "neighbourhood watch" program. As part of its outreach strategy to other minority groups, the group convened an open meeting, under the sponsorship of the Division, to expand its membership to include a cross-section of minority communities in the area. Some 70 community representatives attended this meeting and participated in workshops on the subject of improving community relations through "networking."

In the Northern Region, the Division has been conducting outreach to isolated communities in northern Ontario, with a particular emphasis on Native communities, in order to learn about and examine their concerns and to heighten their awareness of the role and responsibilities of the Commission. On behalf of the Commission, the Race Relations Division prepared a major submission on the effect of Native problems and concerns on the race relations climate in northern Ontario. This submission was presented to the Cabinet Committee on Native Affairs, which is chaired by the Honourable Lorne C. Henderson, Provincial Secretary for Resources Development. As a result of this initiative, the Commission is now represented on the inter-ministerial committee that provides support to the Cabinet Committee.

In the Ottawa area, the Division and the Commission have undertaken several initiatives to deal with race and ethnic relations problems in eastern Ontario. The Commission co-sponsored, with the Ontario Advisory Council on Multiculturalism and Citizenship, a conference entitled, "Know Your Rights," which addressed the new provisions of the Human Rights Code and the mechanisms and programs available to assist the community in this regard. Some 150 community and agency representatives participated in the conference.

In addition, the Division continued to work closely with the National Capital Alliance on Race Relations, which it assisted in forming in 1981. The Commission's staff also worked with the City of Ottawa Committee on Community and Race Relations.

WORKING WITH INSTITUTIONS

Police/Minority Relations

When police/minority tensions developed between minority youths and police in a North York neighbourhood, the Division was instrumental in establishing a Working Group comprising representatives of the police department, the City of North York Mayor's Committee, the Office of the Public Complaints Commissioner, the Metropolitan Toronto Committee on Race Relations and Policing, and the Municipality of Metropolitan Toronto. This group will develop long-term strategies to improve relations between the youths and police in the community. In addition to providing a medium for sharing information and seeking solutions, the group has been developing strategies to break down the mistrust that exists and to facilitate positive police outreach in that area.

In response to changing needs in policing and race relations, the Division has assisted the Metropolitan Toronto Committee on Race Relations and Policing to review its organizational structure and program orientation. It is hoped that this will help the Committee to work more effectively with the police department to improve police/minority relations. This initiative resulted in part from one of the recommendations proposed in a study commissioned by the police department, which examined the organization and functioning of the Metro force. The study recommended a major decentralization to allow for closer interaction between police and the residents they serve.

The Division presented a major brief to the Board of Commissioners of the Metropolitan Toronto Police on the implications of the study, particularly as it addresses race relations and policing in the areas of staff deployment, police training, police recruitment and promotion.

The Division continued to assist in the development of resource materials to be used in police training in race relations. The staff of the Division is preparing a "police/minority relations" section for the proposed police text book on race relations that is being developed by a committee of police departments and the Ontario Police College. This committee developed from a conference on police training and race relations that was co-sponsored by the Ontario Police Commission and the Division.

In addition, the Division continued to conduct in-service training in race relations with various police departments throughout the province.

Municipal Involvement

The Division continued to work closely with the various municipal Community, Race and Ethnic Relations Committees that have been formed in Metropolitan Toronto and other urban centres in Ontario by harnessing these resources when community problems arise. Division staff have drawn upon their guidance and assistance with specific projects and mediations. The Division presented a major brief to the East York Council's Advisory Committee on Multiculturalism and Race Relations, proposing possible areas for race relations project development. The Division also assisted the recently-founded Peterborough Committee to produce its report on race relations. As a result of this report, a race relations coordinator has been appointed by the City of Peterborough.

Media/Minority Relations

In 1982, tensions developed between the management of a radio station and Toronto minority communities when a staff member made some derogatory remarks on the air. The Division, with the assistance of community group members, the Municipality of Metropolitan Toronto and the Ethnic Relations Unit of the Metropolitan Toronto Police, was able to mediate the conflict. As a result of the Commission's intervention in this sensitive matter and the enlightened approach taken by management, an Advisory Board was established, composed of community representatives and staff of the radio station. The Advisory Board is assisting the station to develop greater awareness and sensitivity to the multi-racial and multi-ethnic nature of its radio audience. Various projects are underway to foster improved race relations between the radio station, the minority community and the broader community in general.

In the formation of the Advisory Board, the Division drew upon the expertise and assistance of the City of North York and City of Toronto Committees on Community, Race and Ethnic Relations, Caribana and other community groups. Also assisting was the Ad Hoc Media Group, a coalition of community leaders who are working to improve media/minority group relations.

Social Services Delivery

In Ottawa, the Division's regional office and the Ottawa-Carleton Immigrant Services co-sponsored a workshop which examined the need for integrated policies and practices among the various social service and health agencies and institutions responsible for meeting the needs of minority ethnic groups in the region.

As a result of recommendations arising from the workshop, a task force was struck to implement the proposals that were agreed upon. Similar results were achieved in a cooperative venture between the Division and the Metropolitan Toronto Children's Aid Society.

Correctional Institutions

As a result of reported incidents of racial tensions in correctional institutions, the Division worked cooperatively with the Ministry of Correctional Services to reduce those conflicts and to improve inter-group relations in that system. The Correctional Services Ministry developed a policy on race relations and human rights, which the Commission reviewed. In its implementation of the policy, the Ministry will establish procedures for responding to racial incidents, in consultation with the Division.

Education

A critical starting point in the effort to combat prejudice and discrimination in society is through educational institutions. Therefore, the Division has worked hand in hand with the North York Board of Education and many other boards throughout the province to develop appropriate race relations responses and policies.

In its continuing efforts to sensitize people in the area of education, the Race Relations Division co-sponsored a conference in Windsor with the Windsor Board of Education. The theme was, "Confronting Racism in Schools and Classrooms." Other conferences are planned for different regions of the province.

The Division and the Hamilton Board of Education have co-sponsored a curriculum development project designed for Grades 9 and 10 on the subject of prejudice, discrimination and racism. The purpose of this project is to develop core curriculum materials that will be field-tested in classrooms over a period of two years.

Business and Industry

Human rights education is a process of clarification, sensitization and increasing awareness of the dynamics of discrimination and how to combat it. As such, it has played an important role in many of the activities of the business and industry sector of the Race Relations Division.

As an outcome of formal complaints involving two large employers, the Division conducted two seminars on the topic of race relations issues at the workplace for all management and administrative staff. In a branch of a national retail store, a race relations committee has been set up, which arose from the settlement of a complaint. The Division assisted the committee to deal with race relations problems in that workplace.

The Division also designed a handbook to be used by employers in the promotion of equal employment opportunity and positive race relations in the workplace. The handbook was prepared for management personnel, to assist them to establish equal employment opportunity practices.

Meeting Special Needs

In early 1983, the Division began to develop plans for a provincial Conference on Visible Minority Women. The conference, scheduled for the fall of 1983, is being co-sponsored with the Ontario Women's Bureau. The planning committee has been conducting an intensive series of consultations with various visible minority women's groups and agencies in order to develop the conference agenda.

As a new initiative for fiscal year 1982-83, the Race Relations Division began hosting a series of consultations with minority communities. The main purpose of the consultations is to identify issues and concerns of importance in the communities and to direct these concerns to the appropriate agencies, individuals or institutions for action.

To date, the Race Relations Commissioner and other members of the Division have held two consultations, one with the Filipino Community and another with the Chinese community, in February and March 1983 respectively.

At both consultations the representatives of a wide variety of groups and organizations met with members of the Division to discuss issues and concerns relating to employment, education, housing and social services. Workshop discussions were held and recommendations formulated.

The Chairman of the Filipino consultation was Mr. Tony Anden of the Filipino Cultural Centre. Participants included representatives of the Ontario Advisory Council on Multiculturalism and Citizenship, the Kabayan Community Service Centre and the University of the Philippines Alumni Association.

The consultation with leaders of the Chinese community was attended by over a hundred members representing thirty-four Chinese organizations. Among the organizations were the Chinese Canadian National Council, the Federation of Chinese Canadian Professionals, the Council of Chinese Canadians in Ontario and the Association of the Chinese Community Social Workers.

Similar consultations are being planned with other minority communities such as the Korean, Pakistani, Vietnamese, Black, South Asian, and others. It is expected that in addition to members of the Commission, members of the Cabinet Committee on Race Relations will be present at these consultations.

The Cabinet Committee on Race Relations

The Division continued to assist the Cabinet Committee on Race Relations and its Staff Working Group to respond to current race relations issues and concerns as they relate to the responsibility of the Government of Ontario. The Division assisted the Ontario Manpower Commission and the various ministries responsible for youth employment programs to implement the recommendations of the Cabinet Committees on Race Relations and Manpower regarding youth employment and race relations.

The Division participated as a member of a task force that was given the responsibility of improving visible minority representation in Government of Ontario advertising and communications. After an intensive consultation process with community groups and the advertising industry, and after conducting independent research on the subject, the task force released its report to the Government of

Ontario through its Cabinet Committee on Race Relations. The report focused on the need for the portrayal of racial diversity, and it identified no barriers in the implementation of this policy recommendation. As a result of its findings, the Government established a policy that racial diversity should be represented and it requested the task force, comprising Government communications staff and representatives of the Staff Working Group of the Cabinet Committee on Race Relations, to monitor the implementation of this policy directive.

The task force will be inviting key community and agency representatives to assist it in the review process, and it has commissioned the development of a handbook for communications staff and advertising agency personnel to assist them in portraying racial diversity in a responsible and non-stereotyped manner.

Another important initiative of the Cabinet Committee on Race Relations was the appointment of a Task Force on Publicly Assisted Housing and Race Relations, which was given the responsibility to review the race relations climate as it affects the residents of publicly assisted housing. The task force is consulting with relevant agencies and groups, and it will report its findings to the Cabinet Committee on Race Relations. The Division has a member on this important task force.

Government of Ontario Policy Statement on Race Relations

The Cabinet Committee on Race Relations developed a policy on race relations, which was adopted by the Government of Ontario. This is the first policy statement on race relations to be produced by a government in Canada, and it is being distributed to all ministries and Government boards, commissions and agencies in a reaffirmation of the urgent need to ensure that racism is not tolerated in the province.

Research and Publications

Research continues to serve the Division as an aid in decision-making and problem-solving. Research also makes it possible to develop a current understanding and evaluation of experiences in other jurisdictions within and outside Canada and to apply those experiences in selecting among various courses of action and policies.

A number of major research projects were completed, some of them published within the fiscal year and a few others still due for publication. In January, a study done for the Division by the York University Institute for Behavioural Studies entitled, "Visible Minority Business in Metropolitan Toronto: An Exploratory Analysis," was released in Toronto. The study represented part of the Division's attempt to gain a better knowledge of the race relations situation in a variety of institutional settings. More specifically, it examined the experiences of visible minority business entrepreneurs in the Canadian business environment. The experiences of these entrepreneurs were contrasted with those of similar mainstream business operators.

Similarly, the Division tried to develop an understanding of the career paths of visible minority M.B.A. graduates of Ontario universities. The study, which was conducted for the Division by Queen's University under the direction of Professor Elia Zureik, was released in June 1983. In both the York University and Queen's University studies, the influence of the racial dimension on business success was specifically examined.

In fiscal year 1982-83, a historical review was made of more than twenty years of the Commission's involvement in the area of race relations. This will be a useful bench-mark for program and policy re-direction in the 1980's within the now more specific legislative mandate of the Race Relations Division. This study is due for publication in the coming year.

Overall, research plays a critical role in the involvement of the Division with the Staff Working Group of the Cabinet Committee on Race Relations as well as in providing policy-related research support to the Commissioner for Race Relations and the decision-making process of the Division. Its role in identifying gaps in knowledge, in interpreting data, in developing new approaches in program and policy initiatives, and in evaluating available evidence in the context of program delivery, is one that has been made more urgent by the increase in the Division's responsibilities and workload.

TABLE 12 - Race Relations and Race Relations Commissioner

		1982-83	1981-82
Cases:	Mediations	132	183
	Projects	71	63
	Consultations	384	286
Public Education:	Projects	32	37
	Activities	246	1,848 *
	Consultations	130	-
Research Projects:		7	-

* Includes public education activities by Compliance staff, now shown in separate table.

TABLE 13 - Race Relations Cases According to Sector

	1982-83			1981-82	
Sector	Media-tions	Projects	Consulta-tions	Media-tions	Consulta-tions
Neighbourhood Relations	39	4	8	62	10
Public Services/Facilities	15	1	2	15	7
Criminal Justice System	27	13	13	50	15
Educational Institutions	11	8	52	21	49
The Workplace	7	4	17	8	10
Unions	1	1	10	-	4
Media	10	4	14	11	3
Health/Social Services	1	4	10	1	12
Community Organizations	5	15	179	8	107
Religious Institutions	3	2	11	-	11
Government	12	15	50	3	44
Community at Large	1	-	18	4	14
Total	132	71	384	183	286

ONTARIO HUMAN RIGHTS COMMISSION STAFF

1982-1983

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Jackson, William
Lapalme, Gilles
Mitchell, Irene
St. Onge, Jo-Anne
Welch, Dan

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Burns, Walter
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